

No. 16257 ✓

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United States  
Court of Appeals  
For the Ninth Circuit

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UNITED STATES OF AMERICA,

Appellant,

vs.

FRANK N. MATTISON and IDA G. MATTI-  
SON,

Appellees.

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Transcript of Record

FILED

APR -1 1959

PAUL P. O'BRIEN, CLERK

Appeal from the United States District Court  
for the District of Idaho,  
Southern Division.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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United States District Court for the District of  
Idaho, Southern Division

Civil Action No. 3315

FRANK N. MATTISON and IDA G. MATTISON,  
Plaintiffs,

vs.

UNITED STATES OF AMERICA,  
Defendant.

### COMPLAINT

Plaintiffs, for cause of action, through their attorney allege:

#### I.

This action is of a civil nature for the recovery of individual income taxes arising under the revenue laws of the United States and brought under Sec. 1346(a)(1) of the Judicial Code (28 U.S.C. 1346 (a)(1)) as amended by act of July 30, 1954, c. 648, (68 Stat. 589).

#### II.

Plaintiffs were at all times here mentioned, and now are, husband and wife and citizens of the United States residing in Boise, Idaho, which city lies within the southern division of the District of Idaho. Under Sec. 1402 of the Judicial Code (28 U.S.C. 1402) venue lies in this court.

#### III.

On or before March 15, 1953, plaintiffs filed in the office of Calvin E. Wright, District Director, In-

ternal Revenue District of Idaho, Boise, Idaho, a joint income tax return for the calendar year 1952 and paid the tax shown thereon to be due.

#### IV.

During 1955 the Commissioner of Internal Revenue, after auditing plaintiffs' 1952 return, made certain adjustments in the computation of plaintiffs' 1952 income and by giving effect to these adjustments determined a deficiency of \$69,257.45 in their reported income tax liability for that year. On June 21, 1956, the Commissioner (after giving effect to an alleged overpayment of plaintiffs' 1953 tax liability in the amount of \$25,859.64) made a net assessment of additional income tax against plaintiffs in the amount of \$43,397.81. Notice and demand was served upon plaintiffs requiring payment of these additional taxes, plus interest in the amount of \$10,064.08, or the total amount of \$53,461.89.

#### V.

On July 2, 1956, plaintiffs, pursuant to such notice and demand, paid to Calvin E. Wright, District Director of Internal Revenue, Boise, Idaho, the sum of \$53,461.89.

#### VI.

The adjustments made by the Commissioner in re-computing plaintiffs' taxable income for 1952 were erroneous and illegal and the taxes and interest based upon the adjustments were illegally assessed and collected. By reason of these erroneous and illegal assessments plaintiffs overpaid their income

taxes for the calendar year 1952 by the sum of \$43,397.81 and have paid to the District Director the sum of \$10,064.08 in interest which was erroneously and illegally assessed.

#### VII.

On July 10, 1956, plaintiffs filed with the District Director of Internal Revenue, Boise, Idaho, a proper claim for the refund to them of the income tax and interest illegally and erroneously collected in the manner described in Paragraphs IV through VI hereof. A copy of such claim is attached to this complaint and incorporated herein. Six months have lapsed since the filing of such claim without the Secretary or the Commissioner having taken any action thereon, except that on August 20, 1956, the District Director mailed to the plaintiffs a report recommending disallowance of their claim.

#### VIII.

The erroneous adjustment made by the Commissioner in computing plaintiffs' tax liability for the year 1952 consisted of adding to their taxable income for that year the sum of \$105,228.42, representing that portion of a gain in the amount of \$126,099.78 which plaintiffs realized from the cancellation of 2,189 shares of stock owned by Frank N. Mattison in the Westcott Oil Company, an Idaho corporation. The Commissioner erroneously determined that said \$105,228.42 was income to the taxpayers in 1952 and taxable to them at ordinary rates, when, in fact, \$101,686.98 of such erroneously added income was

not received by plaintiffs or taxable to them until the calendar year 1953, and when, in fact the entire amount of such erroneously added income constituted long term capital gains. The proper taxes due in 1952 and 1953 on this \$105,228.42 should be computed in accordance with the provisions of Sec. 117 of the Internal Revenue Code of 1939 as the plaintiffs had done in their return, but which the Commissioner failed and refused to do.

### IX.

Plaintiffs have for many years reported their income to the Internal Revenue Service on the cash basis.

### X.

In 1945 Frank N. Mattison acquired 25 shares of the capital stock of the Westcott Oil Company at a cost of \$4,841.25. In June, 1952, Frank N. Mattison acquired the remaining 2,164 shares of the capital stock of this corporation from the other 18 stockholders at a cost of \$1,347,480.57, making a total cost to him of \$1,352,321.82 for the outstanding shares of this corporation.

### XI.

On June 13, 1952, at a special meeting of the stockholders of Westcott Oil Company called for that purpose, a resolution calling for dissolution of the corporation was adopted. Frank N. Mattison turned in his shares for cancellation. As part of the process of liquidation during June, 1952, Frank N. Mattison received assets of the corporation having a value of \$1,689,399.07 and assumed corporate obliga-



tions totaling \$310,123.89. In connection with this transaction Mattison incurred costs totaling \$3,677.07, realizing thereby a gain in the amount of \$23,276.29 over the total cost basis of his shares. On their return for 1952 plaintiffs correctly reported Mr. Mattison's profit on this transaction as follows:

Short term capital gain.....	\$ 8,865.29
Long term capital gain.....	14,411.00

## XII.

On May 12, 1953, Westcott Oil Company made a further distribution in liquidation to Frank N. Mattison in the amount of \$101,585.76, and on November 3, 1953, made a final distribution in liquidation to Frank N. Mattison in the amount of \$1,275.90. In connection with these transactions Frank N. Mattison incurred expense in an amount of \$38.17, realizing therefrom long term capital gain in the amount of \$102,823.49, which plaintiffs correctly reported as such on their 1953 return.

## XIII.

The Westcott Oil Company was organized in 1920 under the laws of the State of Idaho. For many years it conducted a large and prosperous business, doing business in most of the principal towns of southern Idaho, employing large numbers of people and owning large amounts of both real and personal property. Its president and dominant personality was C. J. Westcott.

At a special meeting of the stockholders called and held for that purpose on June 13, 1952, a reso-

lution was adopted authorizing and directing the officers and directors of the corporation to wind up its business, pay its debt, and distribute its remaining assets to its shareholder.

Pursuant to this resolution the Board of Directors, consisting of C. J. Westcott, Hugh Cramer, I. E. Westcott and J. R. Simplot, at a special meeting held on the same day, adopted a plan of dissolution which, among other things, provided for distributions to stockholders "at such times and in such amounts as the officers and directors deem advisable and expedient." Plaintiffs were neither officers nor directors of the corporation during the period of dissolution.

Thereafter its officers and directors proceeded to liquidate, dissolve and wind up the corporation and to distribute its assets to its sole stockholder as promptly as was reasonable and prudent so to do. In keeping with their responsibilities as such, the officers and directors of Westcott Oil Company authorized the distributions in liquidation referred to in Paragraphs XI and XII of this complaint.

On May 12, 1953, the corporation filed an application for voluntary dissolution in the District Court of the Third Judicial District of Idaho, in and for the County of Ada. After proper publication and hearing on June 19, 1953, the Honorable M. Oliver Koelsch, a judge of that court, entered an order dissolving the Westcott Oil Company. A certified copy of such order was filed with the Secretary of State of June 22, 1953.

XIV.

There is now due and owing plaintiffs the sum of \$53,461.89 with interest thereon at the rate of 6% per annum from July 2, 1956, on account of income taxes overpaid for the year 1952. Notwithstanding plaintiffs' claim for refund thereof, no part of this amount which was unlawfully assessed and collected has been repaid or credited and there are no offsets or credits against the same.

Wherefore, plaintiffs pray judgment against defendant in the sum of \$53,461.89 with interest according to law, and for their costs and disbursements in this action.

WOOLVIN PATTEN,

/s/ W. H. LANGROISE,

/s/ W. E. SULLIVAN,

Attorneys for Plaintiffs.

Duly verified.

Form 843  
U. S. Treasury Department  
Internal Revenue Service  
(Revised July, 1953)

Claim

To Be Filed With the District Director Where  
Assessment Was Made or Tax Paid

The District Director will indicate in the block below the kind of claim filed, and fill in, where required, the certificate on the back of this form.

Refund of Taxes Illegally, Erroneously, or Excessively Collected.

Name of taxpayer or purchaser of stamps: Frank N. and Ida G. Mattison, 2002 North 21st Street, Boise, Idaho.

1. District in which return (if any) was filed: Internal Revenue District.

2. Period (if for tax reported on annual basis, prepare separate form for each taxable year) from Jan. 1, 1952, to Dec. 31, 1952.

3. Kind of tax: Income Tax.

4. Amount of assessment, \$53,461.89; dates of payment July 2, 1956.

5. Date stamps were purchased from the Government.....

6. Amount to be refunded \$53,461.89.

7. Amount to be abated (not applicable to income, estate, or gift taxes) .....

The claimant believes that this claim should be allowed for the following reasons: See Attached Sheets.

I declare under the penalties of perjury that this claim (including any accompanying schedules and statements) has been examined by me and to the best of my knowledge and belief is true and correct.

Dated July 5th, 1956.

/s/ FRANK MATTISON,

/s/ IDA G. MATTISON.

Frank N. Mattison and Ida G. Mattison, his wife, are taxpayers reporting their incomes on a cash basis.

In 1945 Mr. Mattison acquired 25 shares in the Westcott Oil Company, an Idaho corporation. In June, 1952, he acquired the remaining 2,164 shares of this corporation, becoming its sole stockholder. This corporation was dissolved on June 19, 1953. In connection with the dissolution of the corporation, Mr. Mattison received the following amounts in excess of his cost basis of these shares:

June 27, 1952.....	\$ 23,276.29
May 12, 1953.....	101,585.76
November 3, 1953.....	1,237.73

On their joint returns for 1952 and 1953 the taxpayers correctly reported their capital gains in this transaction as follows:

1952 Short term capital gain...\$	8,865.29
Long term capital gain...	14,411.00
1953 Long term capital gain...	102,823.49

Mr. and Mrs. Mattison paid the correct amount of income tax due on these capital gains and upon their ordinary income for 1952 and 1953.

Upon audit, the Commissioner allocated the gain accruing to the Mattisons from the liquidation of the Westcott Oil Company as follows:

1952 Ordinary income or short term capital gain.....	\$114,093.71
Long term capital gain....	10,869.56
1953 Long term capital gain....	1,136.51

As a result of adding \$105,228.42 to the Mattisons' taxable income for 1952, the Commissioner determined a tax deficiency as to that year in the amount of \$69,257.45. As a result of decreasing the long term capital gain reported on their 1953 return by \$101,686.96, the Commissioner determined an overpayment of tax in the amount of \$25,859.64 as to 1953. On June 21, 1956, the Commissioner made a net assessment against the taxpayers in the amount of \$53,461.89, consisting apparently of a net tax deficiency in the amount of \$43,397.81 for 1952, and interest thereon in the amount of \$10,064.08. This net deficiency and interest the taxpayers paid on July 2, 1956, to the Director of Internal Revenue for the District of Idaho.

The net assessment of \$53,461.89 made by the District Director on June 21, 1956, against Mr. and Mrs. Mattison is an erroneous and illegal assessment in that it improperly adds \$105,228.42 to taxable income in 1952 when, in fact, this profit was long term capital gain, \$101,686.98 which was received in 1953 and \$3,541.44 in 1952, all of which was entitled to the benefits of Section 117 of the Internal Revenue Code of 1939 in computing taxable net income.

Wherefore, the taxpayers respectfully request that the sum of \$53,461.89 be refunded to them, together with interest to the date of payment.

[Endorsed]: Filed February 8, 1957.

[Title of District Court and Cause.]

ANSWER

Comes now the defendant, the United States of America, by and through its attorney Ben Peterson, the United States District Attorney for the District of Idaho, and for answer to the complaint of the plaintiffs admits, denies, and alleges as follows:

1. Denies the allegations contained in paragraph 1 of the complaint, except admits that this is a civil action for the recovery of income taxes alleged to have been overpaid, brought pursuant to 28 U.S.C. 1346(a)(1).

2. Admits the allegations contained in paragraph 2 of the complaint.

3. Admits the allegations contained in paragraph 3 of the complaint.

4. Admits the allegations contained in paragraph 4 of the complaint.

5. Admits the allegations contained in paragraph 5 of the complaint, except alleges that the sum of \$53,461.89 was paid to the District Director of Internal Revenue at Boise, Idaho, on July 5, 1956.

6. Denies the allegations contained in paragraph 6 of the complaint.

7. Denies the allegations contained in paragraph 7 of the complaint, except admits that on July 10, 1956, the plaintiffs filed a claim for refund with the District Director of Internal Revenue at Boise,

Idaho, a copy of which is attached to the complaint. Defendant further admits that more than six months have elapsed since the filing of the claim for refund. Defendant further admits that on August 20, 1956, the District Director of Internal Revenue at Boise, Idaho, mailed to the plaintiffs a "30-day letter," in which a revenue agent recommended disallowance of the claim for refund. Defendant denies all matters contained in the claim for refund not specifically admitted herein.

8. Denies the allegations contained in paragraph 8 of the complaint, except alleges on information and belief that the adjustment made by the Commissioner of Internal Revenue in computing the plaintiffs' tax liability for the year 1952 consisted of adding to their taxable income for that year the sum of \$103,457.70, representing that portion of a gain in the amount of \$114,093.71, which the plaintiffs realized from the sale of assets acquired from Westcott Oil Co. Defendant further alleges that the Commissioner of Internal Revenue determined that \$103,457.70 was income to the plaintiffs in 1952 and was taxable to them at ordinary income rates. The defendant admits that the plaintiffs received \$101,686.98 of that amount on May 12, 1953.

9. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 9 of the complaint.

10. Denies the allegations contained in paragraph 10 of the complaint, except admits that in



1945 Frank N. Mattison acquired twenty-five shares of the capital stock of the Westcott Oil Co. at a cost of \$4,841.25.

11. Denies the allegations contained in paragraph 11 of the complaint, except alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegation relating to the special meeting of the stockholders of Westcott Oil Co. on June 13, 1952. The defendant admits that in 1952 Frank N. Mattison received the operating assets of the Westcott Oil Co. which he sold in 1952 for a total price of \$1,689,399.07. Defendant alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegation that the plaintiff assumed corporate obligations totaling \$310,123.89. The defendant alleges upon information and belief that in connection with this transaction the plaintiff incurred costs totaling \$3,671.12. Defendant admits that on their income tax return for 1952 the plaintiff reported a profit on this transaction as follows:

Short-term capital gain.....	\$ 8,865.29
Long-term capital gain.....	\$14,411.00

12. Denies the allegations contained in paragraph 12 of the complaint, except admits that on May 12, 1953, Frank N. Mattison was paid \$101,585.76 by Westcott Oil Co. Defendant further admits that on November 3, 1953, Frank N. Mattison received a refund on an insurance policy held by Westcott Oil Co. in the amount of \$275.90.

13. Alleges that it is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of the complaint.

14. Denies the allegations contained in paragraph 14 of the complaint, except admits that no part of the amount in suit has been repaid or credited to the plaintiffs.

Wherefore, having fully answered, the defendant prays for judgment in its favor against the plaintiffs, for the costs of this action and for all other relief which to the Court may seem just and proper.

/s/ BEN PETERSON,  
United States Attorney.

Certificate of service attached.

[Endorsed]: Filed April 12, 1957.

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[Title of District Court and Cause.]

## AMENDMENT TO ANSWER

### Second Defense

As a second, separate and alternative defense, and without waiving any of the matters contained in its original answer, the defendant alleges:

1. If the gain derived by the plaintiffs from the transaction in question is determined to be properly taxable in 1953, it is properly taxable as short term capital gain in that year.

2. Wherefore, in that event, the defendant is entitled to offset against any amounts found to be due the plaintiffs for 1952, the taxes found to be owing it for 1953 by reason of the foregoing.

/s/ BEN PETERSON,  
United States Attorney.

[Endorsed]: Filed September 9, 1957.

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[Title of District Court and Cause.]

### STIPULATION

It is agreed by and between the parties to the above-entitled action that the documents identified below are genuine and may be received in evidence as attachments to this stipulation for the purpose of this case. This Stipulation in no wise restricts the right of either party to introduce additional documentary evidence during its trial.

Exhibit A. Income tax return of Frank N. and Ida G. Mattison for the calendar year 1952.

Exhibit B. Income tax return of Frank N. and Ida G. Mattison for the calendar year 1953.

Exhibit C. Income tax return of Westcott Oil Company for the calendar year 1952.

Exhibit D. Income tax return of Westcott Oil Company for the calendar year 1953.

Exhibit E. Charter of Westcott Oil Company and amendments thereto.

Exhibit F. Petition, notice and order of dissolution of Westcott Oil Company.

Exhibit G. Offer and agreement between Mattison and Continental Oil Company dated May 12, 1952.

Exhibit H. Seventeen Option Agreements executed by Stockholders of the Westcott Oil Company in favor of Frank N. Mattison along with escrow instructions.

Exhibit I. Seventeen letters from Frank N. Mattison to stockholders of the Westcott Oil Company exercising the options attached as Exhibit H.

Exhibit J. Minute Book of Westcott Oil Company containing minutes of Stockholders meeting held on June 13, 1952, of Directors Meeting held on June 13, 1952, and Minutes of Directors Meeting held on April 28, 1953.

Exhibit K. Various documents dated June 16, 1952, conveying certain assets of the Westcott Oil Company to Frank N. Mattison.

Exhibit L. Various documents dated June 16, 1952, conveying certain assets from Frank N. Mattison and Ida G. Mattison to the Westcott Oil Corporation, a wholly owned subsidiary of the Continental Oil Company.

Exhibit M. Stock transfer Book of Westcott Oil Company.

Exhibit N. Three checks Westcott Oil Company, two dated March 12, 1953, and one dated May 12, 1953.

Exhibit O. Cash Book of the Westcott Oil Company for the period January 1, 1952, to May 12, 1953.

Exhibit P. Deposit slip dated June 27, 1952, and voucher describing deposit.

Exhibit Q. Deposit slip dated May 13, 1955.

Executed this 9th day of September, 1957, in Boise, Idaho.

/s/ WOOLVIN PATTEN,  
Attorney for Plaintiffs.

/s/ BEN PETERSON,  
Attorney for Defendant.

[Endorsed]: Filed September 10, 1957.

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[Title of District Court and Cause.]

### REPLY TO COUNTERCLAIM

Plaintiffs, through their undersigned attorneys, for reply to defendant's second alternative defense and counterclaim, admit, deny and allege as follows:

1. Admit that the capital gain from the liquidation of the Westcott Oil Company was properly taxable to plaintiffs in 1953.

2. Deny that such capital gain is taxable as a short term capital gain in 1953.

3. Deny that defendant is entitled to offset any tax, in addition to the amount reported on plaintiffs' Return, which may be due in 1953 against any amount found to be due plaintiffs for 1952.

4. Allege that at all times between May 30, 1952, and May 12, 1953, Frank N. Mattison was the owner of all the outstanding stock of the Westcott Oil Company; that except for a short period of time when such shares were held in escrow in the First Security Bank, Frank N. Mattison had in his possession a valid certificate evidencing ownership of this stock, and that such shares were not cancelled until May 12, 1953.

5. Allege that plaintiffs' Return for the calendar year 1953 was filed with the District Director of Internal Revenue, Boise, Idaho, on February 23, 1954; that more than three years have elapsed since both the filing of such Return and the date upon which such return was required to have been filed by law, and that no assessment as to 1953 has been made, statutory notice issued, or suit begun within such three-year period.

6. That the assessment or collection of any tax in addition to the amount shown on plaintiffs' Return is now barred by Section 6501(a) Internal Revenue Code of 1954 (26 U.S.C. 6501(a)).

Wherefore, plaintiffs pray that defendant's counterclaim be dismissed.

/s/ W. E. SULLIVAN,

/s/ WOOLVIN PATTEN,

Attorneys for Plaintiff.

Receipt of copy acknowledged.

[Endorsed]: Filed September 10, 1957.

[Title of District Court and Cause.]

### MEMORANDUM OPINION

This is an action for refund of income taxes in the amount of \$53,461.89, plus interest, allegedly overpaid by the taxpayer for 1952.

Plaintiffs, as husband and wife, filed joint income tax returns for the years in question and any reference to "taxpayer" or "Mattison" is intended to refer only to plaintiff, Frank N. Mattison.

The controversy is in regard to the method of taxing the gain which Mattison received as a result of the liquidation of the Wescott Oil Company.

The Westcott Oil Company was incorporated under the laws of the State of Idaho in 1920, and for over thirty (30) years was engaged in the business of selling gasoline and related petroleum products in the States of Idaho and Oregon. Up until 1926, the corporation was wholly owned by the Continental Oil Company. In 1926, C. J. Wescott, also known as Ike Westcott, acquired twenty (20) per cent of the stock of said corporation. Wescott then became President of the corporation, which position he held until its final dissolution in 1953. In 1945, the Continental Oil Company sold its stock to Wescott who resold a considerable amount of said stock to friends and business associates at the same price he had paid Continental. It was at this time that the taxpayer acquired twenty-five (25) shares of said stock. He was then Secretary-Treasurer of

the corporation and held such position between the years of 1929 and 1952.

In 1951, Wescott, in behalf of himself and the other stockholders, negotiated with Continental Oil Company to sell the stock of the Westcott Oil Company to Continental. Westcott's negotiations for a sale of the stock to Continental were unsuccessful. During some of the negotiations with Continental, Mattison had been present for the purpose of assisting Mr. Westcott. After Mattison learned that the negotiations had failed he approached Wescott in regard to purchasing the stock of the Wescott Oil Company at the price Wescott had been asking for it from Continental. Wescott and Mattison orally agreed that the shares could be acquired at such prices. Immediately thereafter, Mattison began negotiations for the sale of the physical assets of the Wescott Oil Company to Continental, if and when he acquired the same. After some negotiations, and on May 12, 1952, Continental executed a binding offer in favor of Mattison good for thirty (30) days, to purchase the physical assets of the Wescott Oil Company for \$1 million, plus inventory.

After obtaining the agreement from Continental, Mattison approached the other stockholders of Wescott Oil and obtained options to purchase their shares in said corporation. These options were exercised on or about May 30, 1952, and pursuant to the terms of the option agreement, the shareholders of Wescott Oil Company deposited their shares with the First Security Bank of Idaho as



escrow holder. Wescott Oil Company issued a new certificate of stock in the name of Frank N. Mattison for a total of 2,189 shares. This certificate was for all of the stock purchased by Mattison from the other stockholders and the twenty-five (25) shares purchased by him in 1945. The new certificate was deposited with the escrow holder as required by the terms of the escrow instructions.

Mattison, being the sole stockholder of Wescott Oil Company, called a special stockholders' meeting for June 13, 1952, at which meeting it was resolved that the business of the corporation be discontinued; that the Officers and Directors proceed to wind up its business affairs; transfer its assets to the stockholder; and dissolve the corporation.

Immediately following the shareholders' meeting a special meeting of the Board of Directors was held, at which time Mattison resigned as Secretary-Treasurer of the corporation. At this meeting the Directors resolved that the operating assets be conveyed to Mattison by way of partial distribution. Soon thereafter, and on June 16, 1952, the Wescott Oil Company conveyed its operating assets to the taxpayer, who then reconveyed the same to a subsidiary corporation wholly owned by Continental Oil Company. At said time, Continental Oil Company paid Mattison by check, \$1,400,000.00, which check was endorsed by Mattison and deposited with the bank, to be paid out according to the escrow instructions. The balance of the purchase price for

the operating assets of \$289,399.07, was paid by the subsidiary corporation of Continental on June 27, 1952. Likewise, these funds were applied on obligations of Mattison according to instructions.

The certificate representing all of the stock of Wescott Oil Company issued to Mattison was released to him on June 16, 1952, with an endorsement thereon as follows: "June 16, 1952, partial liquidation made this date hereon by distribution to the above-named stockholder, Frank Mattison, of all the real and personal property, investments, fixtures, equipment, contracts, and other valuable rights and liabilities, and all merchandise, accounts and notes receivable of the company, excepting only cash and stock of Lilly Seed Co. This stock being hereafter nontransferable, all pursuant to stockholder's and directors' resolution of June 13, 1952."

Subsequent to the conveyance of the operating assets to Mattison and by Mattison to the subsidiary corporation of Continental, the Wescott Oil Company continued to wind up its business affairs until May 12, 1953, at which time the balance of the assets in the corporation were distributed to taxpayer and he, in turn, surrendered the certificate representing all the shares in the corporation, which was then cancelled. Wescott Oil Company was finally dissolved by a Court Decree on June 19, 1953.

During all of the period that the Wescott Oil Company was being liquidated and its business affairs wound up, Mattison was neither a statutory

officer nor a Director of the corporation. Mattison did not direct or control the liquidation and dissolving of the corporation.

Subsequent to the time the corporation was dissolved, and on November 3, 1953, Mattison received shares of stock in the Lilly Seed Company which he sold in 1955 for \$1,000 and an insurance refund in the amount of \$275.90. The \$101,585.76 distributed to taxpayer on May 12, 1953, the insurance refund, and the fair market value of the Lilly stock was reported by the taxpayer as long term capital gain in 1953.

The 2,164 shares of stock of the Wescott Oil Company purchased by Mattison in May, 1952, cost him \$1,347,480.57. The twenty-five (25) shares of stock acquired by him in 1945 cost \$4,841.25. His total cost of all of the stock was \$1,352,321.82. The physical assets of the corporation distributed to him by way of partial distribution in June, 1952, were sold for \$1,689,399.07, and he assumed an obligation of the corporation in the amount of \$310,123.89, representing a gain of \$23,276.29, after expenses of \$3,677.07, over the cost basis of his shares. This gain was reported by Mattison and his wife on a joint return filed for the year 1952.

As a result of the final liquidation of the corporation, Mattison received a total of \$102,861.66 in May and November of 1953. This amount, received in 1953, Mattison and his wife reported, less expenses of \$38.17, in a return filed for 1953. This gain was reported as a long term capital gain.

The Internal Revenue Service determined that the Mattisons owed additional income taxes for 1952, amounting to \$69,257.45, and were entitled to a refund of \$25,859.64 for the year 1953. As a result, the Director of Internal Revenue assessed a net deficiency of \$43,397.81, plus interest in the amount of \$10,064.08, which total of \$53,461.89 as assessed was paid by the Mattisons. This suit is for the recovery of said amount, plus interest. There is no dispute between the parties as to the total amount of gain in the sum of \$126,099.78 which Mattison received as a result of the liquidation of the Wescott Oil Company.

The plaintiffs contend that the gain should be paid as reported by them and that the \$102,823.49 of the gain should be taxed as reported in 1953. It is first contended by the defendant, that all of this gain, except \$2,273.04, should be taxed in 1952. As an alternate contention, the defendant claims that the gain should be allocated between the years, as reported, but taxed in 1953 as short term gains.

After fully considering the evidence and the excellent briefs filed herein, this Court favors the position of the plaintiffs.

The manner by which liquidating dividends are taxed to the individual shareholders receiving the same was provided for in Section 115(c) of the Internal Revenue Code of 1939:

“Distributions in Liquidation—Amounts distributed in complete liquidation of a corporation shall

be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock \* \* \*

Where several distributions are made in the process of completely liquidating a corporation the distributions received are first applied to reduce the cost basis of the stock and capital gain is only realized when the amount of the liquidating dividends exceed the cost basis. *Arthur Letts, Jr., vs. Commissioner*, 30 B.T.A. 800, affirmed (9 Cir.) 84 F.2d 760; *T. T. Word Supply Company vs. Commissioner*, 41 B.T.A. 965; *Ludorff, et al., vs. Commissioner*, 40 B.T.A. 32; *Quinn vs. Commissioner*, 35 B.T.A. 412. It has been concluded that this result may follow where the corporation is wholly owned by a single stockholder. *Word Supply Company vs. Commissioner*, supra; *Lockhart vs. Commissioner*, 8 T.C. 436; *Mertens*, Law of Federal Income Taxation, Vol. 1, § 9.74, n.20; cf. *Hellman vs. Helvering*, 68 F.2d 763. It appears to be the general rule that such gain is only realized and recognized when it is actually received by the shareholder. *Northwest Bancorporation vs. Commissioner*, 8 Cir., 88 F.2d 293; *Dresser vs. United States, Ct. Cl.*, 55 F.2d 499; cf. *Case vs. Commissioner*, 9 Cir., 103 F.2d 283.

It is urged by the defendant that the foregoing statute and cases are not applicable in the instant case; that the nature of the transaction with which we are concerned is a unified plan to purchase assets for resale; that the corporate entity, therefore, must

be disregarded and the transaction taxed as a purchase and sale of assets and not as on the liquidation of a corporation under Section 115(c) I.R.C. 1939. In support of this contention the defendant cites *Commissioner vs. Ashland Oil and Refining Company*, 99 F.2d 558, cert. denied, 306 U.S. 61; *Cullen vs. Commissioner*, 14 T.C. 368; *Kimbell-Diamond Milling Co. vs. Commissioner*, 14 T.C. 74; affirmed 187 F.2d 718, cert. denied, 342 U.S. 827; *Montana-Dakota Utilities Company vs. Commissioner*, 25 T.C. 408; *Snively vs. Commissioner*, 19 T.C. 850, 219 F.2d 266.

On reviewing the cases cited by defendant this Court is of the opinion that they are not controlling here. To be of assistance in the case here, the holdings in said cases would have to be extended beyond their scope.

On the facts of this case the Court does not believe that a tax should be assessed against the taxpayer except in the manner provided generally for the taxation of capital gains in the complete liquidation of a corporation.

Although it is true that "the incidence of taxation depends upon the substance of a transaction," *Commissioner vs. Court Holding Co.*, 324 U.S. 331, 65 S.Ct. 707, 708, it is not always easy to determine what is "form" and what is "substance." Here there can be no question but that the taxpayer purchased the stock and not the assets of the Wescott Oil Company. The taxpayer purchased the stock (other than the twenty-five (25) shares he already

owned) intending to liquidate the corporation, sell the assets, and thereby make a profit. There are no indications of wrongful acts or intentions on the part of the taxpayer or anyone else. If a taxpayer employs a lawful method of making a profit in a transaction he should be entitled to take advantage of any lawful method of salvaging as much of that profit as possible.

It does not appear that the taxpayer had any desire to acquire the assets of the Wescott Oil Company, as such, but only as part of his overall plan of acquiring the stock and liquidating the corporation at a profit. No authority has been cited and none found to the effect that merely because corporate stock is purchased with the intent of liquidating a corporation that then the general rules relating to the realization and reporting of capital gains and losses on corporate liquidations are no longer applicable. In the absence of good authority to that effect this Court is inclined to believe that the general rules applicable in such cases should be applied to determine the plaintiffs' liability.

It is argued in the alternative by the defendant that if the gain is properly recognized on the liquidation of the corporation, as contended by the taxpayer, that it should be treated as short term capital gain and not long term capital gain in the year it was actually received.

It is urged that the taxpayer's stock holding period terminated with the liquidating dividend of

June 16, 1952, which was made pursuant to a plan of complete liquidation executed on June 13, 1952.

Counsel for the defendant admit they have found no case which determines the event which terminates the holding period for the stock "exchanged" upon corporate liquidation. As pointed out by counsel for plaintiff, the cases cited by counsel for the defendant as lending support for such theory involve cases where title had passed from the taxpayer at the time the exchange was said to have taken place.

It is the clear implication of several of the cases involving the reporting of gains or losses realized on corporate liquidation that whether or not an amount received on an installment liquidation is long or short term gain is determined by the length of time that has passed between the purchase of the stock and the actual receipt of the amount on which gain is realized. Cf. *Letts vs. Commissioner*, *supra*. Here title to the stock did not pass when the first liquidating dividend was received by taxpayer pursuant to the plan of corporate liquidation and dissolution.

In accordance with the above and foregoing it is the opinion of this Court that plaintiffs properly reported the transaction in question for tax purposes and that they are entitled to a refund of the taxes paid under protest together with accrued interest thereon.

Counsel for the plaintiffs shall prepare Findings of Fact, Conclusions of Law, and a Proposed Judge-



ment, serve copies of the same on counsel for the defendant and submit the originals to the Court.

Dated this 2nd day of July, 1958.

/s/ FRED M. TAYLOR,

United States District Judge.

[Endorsed]: Filed July 2, 1958.

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[Title of District Court and Cause.]

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

This matter having come on regularly for trial without a jury before the Honorable Fred M. Taylor, a judge of the above-entitled court, on September 10, 1957; plaintiffs appearing by Willis E. Sullivan of Boise, Idaho, and Woolvin Patten of Seattle, Washington, their attorneys, and the defendant appearing by Ben Peterson, United States Attorney for the District of Idaho, and Thomas Foye, Attorney, Tax Division, Department of Justice, the parties having produced testimony and other evidence in support of their respective contentions as reflected in the pleadings filed herein, and the parties having submitted written briefs in argument, the Court being satisfied of its jurisdiction over the parties and the subject matter of this proceeding, having considered all the evidence and briefs herein, having rendered its memorandum opinion on July 2, 1958, and being fully advised in the premises, now makes the following:

## Findings of Fact

## I.

Plaintiffs instituted this action against the United States to recover \$53,461.89 of the individual income taxes which they paid for the calendar year 1952 together with interest according to law. Jurisdiction for such action exists by reason of Section 1346(a) (1) of the Judicial Code, as amended. (28 U.S.C. 1346(a)(1).)

## II.

Plaintiffs were and are at all times here pertinent husband and wife, citizens of the United States, and residents of Boise, Idaho. Venue in this court exists by reason of Section 1402 of the Judicial Code (28 U.S.C. 1402).

## III.

Plaintiffs during the years here in question and for many years prior thereto filed income tax returns in the Internal Revenue District of Idaho on what is known as the cash basis. During the calendar years 1952 and 1953, plaintiffs filed joint returns. The only income reported on their returns for the calendar years 1952 and 1953, is that of the plaintiff Frank N. Mattison, and any reference to "Mattison" is intended to refer to Frank N. Mattison.

## IV.

The only controversy between the parties is in regard to the proper method of taxing the gain which Mattison realized as a result of the liquidation of the Westcott Oil Company. References hereinafter

to the "Company" or the "Corporation" are intended to refer to the Westcott Oil Company.

#### V.

The Westcott Oil Company was incorporated under the laws of the State of Idaho in 1920, and for over 30 years engaged in the business of selling gasoline and related petroleum products in the States of Idaho and Oregon. Up until 1926, the Company was wholly owned by the Continental Oil Company. In 1926, C. J. Westcott, also known as "Ike" Westcott, acquired twenty (20) per cent of its stock. Westcott then became president of the Company, which position he held until its dissolution in June of 1953.

#### VI.

In 1945 Continental Oil Company sold its stock to Westcott who resold a considerable amount of said stock to friends and associates at the same price he had paid Continental. It was at this time Mattison acquired twenty-five (25) shares of said stock. He was then Secretary-Treasurer of the Company, which position he held between the years 1929 and 1952.

#### VII.

During the considerable number of years it was in existence, the Westcott Oil Company was a very successful business venture, earning sizeable profits and paying dividends. Its name was well known in Idaho and parts of Oregon.

## VIII.

In about 1950, for business reasons which are not here particularly important, Mr. Westcott and the other stockholders resolved to dispose of their shares provided a satisfactory price could be obtained. Mr. Westcott on behalf of himself and the other stockholders undertook to find a buyer for these shares.

## IX.

Mr. Westcott contacted several prospective buyers in an effort to dispose of the stock of the Westcott Oil Company. These negotiations were only for the sale of stock. No negotiations were ever undertaken by Mr. Westcott looking toward a sale of assets.

## X.

In 1951, Mr. Westcott entered into negotiations with the Continental Oil Company for the sale of the stock of the Westcott Oil Company. For a while it looked as though these negotiations would be successful. An exchange of the shares of Westcott Oil Company for the common stock of Continental Oil Company was very nearly agreed upon, but failed of conclusion because of an increase in the quoted price of the stock of Continental. Mr. Westcott then undertook to negotiate a cash sale. Westcott demanded a price of \$607.63 per share.

## XI.

The price of \$607.63 was arrived at as the price necessary to net the stockholders \$500.00 per share after paying taxes on their capital gains computing such tax by the alternative method. This price was

simply the price which Mr. Westcott and the other stockholders wished to realize from the sale of their shares. There was no apparent direct connection between this price and the value of the operating assets of Westcott Oil Company except to the extent that the value of any corporation's shares has some relationship to its assets.

## XII.

The negotiations of Mr. Westcott with Continental Oil Company failed because Continental was unwilling to pay the price demanded by the stockholders for their shares.

## XIII.

Mattison, who was Secretary and Treasurer of the Westcott Oil Company, was present at some of the negotiations of Westcott with the Continental Oil Company for the purpose of assisting Mr. Westcott.

## XIV.

Although Mattison was not present at the meeting between Westcott and Continental at which negotiations broke down, he soon learned this fact and in April of 1952, approached Mr. Westcott in regard to purchasing the stock of Westcott Oil Company at the same price Westcott had been asking for it from Continental, i.e., a price sufficient to yield approximately \$500.00 per share after capital gains taxes.

## XV.

Mr. Westcott and Mattison orally agreed that Mattison could acquire these shares at the same price

they had been offered to other prospective purchasers.

#### XVI.

Immediately after receiving this oral assurance from Mr. Westcott, Mattison began negotiations for the sale of the operating assets of the Westcott Oil Company to Continental, if and when he acquired them. After some negotiations, on May 12, 1952, Continental executed a binding offer in favor of Mattison good for 30 days to purchase the operating assets of the Westcott Oil Company for \$1,000,000.00 plus inventory.

#### XVII.

After obtaining this purchase agreement from Continental, Mattison approached the other stockholders of the Westcott Oil Company and obtained written options to purchase their shares in said corporation. During the remainder of May, 1952, he obtained options from the 16 stockholders of the corporation other than himself and Mr. Westcott.

#### XVIII.

These options were exercised in writing on or about May 30, 1952, and pursuant to their terms the other stockholders of Westcott Oil Company deposited their shares with the First Security Bank of Idaho as escrow holder.

#### XIX.

On June 10, 1952, all the outstanding stock of the Westcott Oil Company except the shares owned by Mattison had been deposited with the First

Security Bank of Idaho. As was permitted under the escrow instructions, on June 10, 1952, Westcott Oil Company issued a new certificate of stock in the name of Frank N. Mattison for a total of 2,189 shares. This certificate represented all the stock Mattison had contracted to purchase from the other stockholders as well as the 25 shares purchased by him in 1945, and constituted all the outstanding stock of the company.

## XX.

Mattison, being the sole stockholder of the Westcott Oil Company, called a special meeting of the stockholders for June 13, 1952, at which meeting it was resolved that the business of the company be discontinued, that the officers and directors proceed to wind up its business affairs, transfer its assets to the stockholder, and dissolve the company.

## XXI.

Immediately following the stockholders' meeting, a special meeting of the Board of Directors of the Westcott Oil Company was held, at which time Mattison resigned as Secretary and Treasurer of the company. At this meeting, the Directors resolved that the operating assets be conveyed to Mattison by way of a partial distribution in liquidation.

## XXII.

On June 16, 1952, the Westcott Oil Company conveyed its operating assets to Mattison, who then reconveyed the same to a wholly owned subsidiary of the Continental Oil Company.

## XXIII.

As partial consideration for the conveyance to it of these assets, on June 16, 1952, Continental Oil Company issued Mattison a check for \$1,400,000.00 which Mattison endorsed over to the First Security Bank of Idaho. The proceeds of this check were applied as follows: \$265,000.00 paid on the obligation of the company to the bank which had been personally assumed by Mattison, and \$1,135,000.00 paid out under escrow instructions to the selling stockholders.

## XXIV.

The remaining \$289,399.07 of the purchase price for the operating assets of Westcott Oil Company was paid to Mattison by the wholly owned subsidiary of Continental on June 27, 1952. The following disbursements were then made by Mattison: \$45,123.89 in final payment of the Company's indebtedness to the First Security Bank personally assumed by Mattison, and \$212,480.57 in final payment for the shares Mattison purchased from Mr. Westcott. After these disbursements, \$31,794.61 remained available to Mattison for the payment of expenses and as gain.

## XXV.

The certificate representing all of the stock of Westcott Oil Company issued to Mattison was released to him by the First Security Bank on June 16, 1952, and the following legend endorsed thereon:

“June 16, 1952, partial liquidation made this date hereon by distribution to the above-named stockholder, Frank Mattison, of all the real and personal



property, investments, fixtures, equipment, contracts, and other valuable rights and liabilities, and all merchandise, accounts and notes receivable of the company excepting only cash and stock of Lilly Seed Co. This stock being hereafter nontransferable, all pursuant to stockholder's and directors' resolution of June 13, 1952."

The certificate was then returned to Mattison who retained it in his possession until it was surrendered to the company for cancellation in June of 1953.

#### XXVI.

Subsequent to the conveyance of the operating assets of the Westcott Oil Company to Mattison and by Mattison to the subsidiary of Continental, the Westcott Oil Company continued to wind up its business affairs until May 12, 1953, at which time the balance of the assets of the company then consisting of cash in the amount of \$101,585.76 were distributed to Mattison and he in turn surrendered for cancellation the certificate which he held representing all the outstanding stock of the company, which was cancelled. Westcott Oil Company was finally dissolved by court decree on June 19, 1953.

#### XXVII.

During all of the period that the Westcott Oil Company was being liquidated and its business affairs wound up, Mattison was neither a statutory officer nor a director of the company. Mattison did not direct or control the liquidation and dissolution of the company.

## XXVIII.

Subsequent to the time the company was dissolved and on November 3, 1953, Mattison received shares of stock in the Lilly Seed Company which he sold in 1955 for \$1,000.00 and an insurance refund in the amount of \$275.90. The \$101,585.76 distributed to Mattison on May 12, 1953, the insurance refund, and the fair market value of the Lilly stock, were reported by the plaintiffs as long-term capital gain in 1953.

## XXIX.

The 2,164 shares of stock of the Westcott Oil Company purchased by Mattison in May, 1952, cost him \$1,347,480.57. The 25 shares of stock he acquired in 1945 cost \$4,841.25. His total cost of all the stock was \$1,352,321.82. The physical assets of the company distributed to him by way of partial distribution in June, 1952, were sold for \$1,689,399.07 which is accepted without dispute as their fair market value. In connection with the distribution to Mattison of the operating assets, he personally assumed an obligation of the company in the amount of \$310,123.89 to the First Security Bank. Thus, Mattison realized in 1952, after expenses totaling \$3,677.07, a gain of \$23,276.29 over the cost basis of his shares. This gain was reported by Mattison and his wife on the joint return they filed for the year 1952. The portion of this gain attributable to the 2,164 shares he purchased in May was reported as a short-term capital gain. The portion attributable to his original 25 shares was reported as a long-term capital gain.

## XXX.

As a result of the final liquidation of the company, Mattison received a total of \$102,861.66 in May and November of 1953. This amount received in 1953, Mattison and his wife reported, less expense of \$38.17, on the return they filed for 1953. The entire amount of this gain they treated as long-term capital gain.

## XXXI.

The Internal Revenue Service upon audit determined that the Mattisons owed additional income taxes for the year 1952 amounting to \$69,257.45 and were entitled to a refund of \$25,859.64 for the year 1953. As a result, the District Director of Internal Revenue assessed a net deficiency of \$43,397.81 against the Mattisons, plus interest in the amount \$10,064.08. This total assessment of \$53,461.89 was paid by the Mattisons on July 2, 1956, to the District Director in Boise, Idaho.

## XXXII.

The deficiency assessed against the Mattisons by the Internal Revenue Service is essentially due to the Commissioner's determination that \$101,585.70 of the gain from the liquidation of the Westcott Oil Company which the Mattisons reported on their 1953 return as long-term capital gain, was taxable to them in 1952 as short-term capital gain.

## XXXIII.

After payment of the assessment made by the District Director of Internal Revenue, the Mattisons

filed a claim for refund and after expiration of six months instituted this action.

#### XXXIV.

There is no dispute between the parties that \$126,099.78 was the gain Mattison realized as a result of the liquidation of the Westcott Oil Company.

#### XXXV.

The plaintiffs contend in their claim for refund and in the complaint in this action that \$23,276.29 of this gain is taxable in 1952 partly as short-term capital gain and partly as long-term capital gain, and that the \$102,823.49 which they received in 1953 is taxable in that year as long-term capital gain. This is, of course, the manner in which the transaction was reported in their returns for these years.

#### XXXVI.

The defendant originally claimed that all but \$2,273.04 of the gain realized by Mattison is taxable in 1952, and, except for the profit attributable to his original 25 shares, taxable as short-term capital gain.

#### XXXVII.

At trial the defendant raised the alternate defense that the gain realized by Mattison should be allocated between the years 1952 and 1953 as reported on their returns, but taxed as short-term capital gain even though not received until 1953.

## XXXVIII.

There seems no dispute that if the plaintiffs' contention as to the manner of reporting this gain is correct, then the returns are correct as filed and the Commissioner's assessment is erroneous. Nor is it disputed that if the Government's original contention be right, the assessment made by the Director is correct. If the Government's alternative defense is correct, the plaintiffs would be entitled to a substantially smaller refund, the amount of which could easily be computed.

## XXXIX.

The gain here in question was realized from the purchase of all the outstanding stock of the Westcott Oil Company and the complete liquidation of that company over a period of time. The time required for the winding up and liquidation of the Westcott Oil Company was not unreasonable considering the complexities involved.

## XL.

All the formalities and legal requirements incident to a purchase of stock of the Westcott Oil Company and the liquidation of that company were complied with and all the instruments involved in the transaction contemplated a purchase of stock and a corporate liquidation.

## XLI.

Mattison purchased the stock of the Westcott Oil Company, not its assets. The net profit he realized was almost entirely from its complete liquidation.

## XLII.

Mattison by the purchase of the outstanding stock of the Westcott Oil Company acquired not only the assets of the company but also all its sizeable liabilities including a liability of \$310,000.00 to the First Security Bank of Idaho, known and unknown liabilities for taxes, and liability for all future claims of every nature which might be made against the corporation. Mattison acquired the cash funds of the company, its accounts receivable, and its accounts payable. In short, Mattison acquired every right and liability and every advantage and disadvantage which goes with the usual purchase of stock. There were no side agreements between Mattison and the selling stockholders which would distinguish the transaction between them from an ordinary purchase of stock.

## XLIII.

The price at which the stock of the Westcott Oil Company was purchased by Mattison was fixed by the selling stockholders on the basis of their appraisal of the value of their shares and the tax cost to them of a sale for cash. There is no evidence that this price was based upon an appraisal or evaluation of assets, except of course to the extent the price of any stock is to some degree influenced by the value of the assets behind it. The price at which Mattison purchased the shares in question took into account the earning history of the company, its going concern value and good will, and perhaps other factors in addition to the market value of its physical assets.

## XLIV.

The only unusual factor in Mattison's purchase of the stock of the Westcott Oil Company was that at the time of purchasing these shares he intended, or rather hoped, to liquidate the company at a profit. Distributing to himself and reselling the operating assets of the company was, of course, an essential part of his plan for liquidation. However, Mattison did not acquire the stock of Westcott Oil Company solely in order to acquire its operating assets. Mattison was interested in the operating assets of the company only insofar as they were part of his overall plan to liquidate the company at a profit.

## XLV.

The Westcott Oil Company continued its corporate existence until June 19, 1953, when it was dissolved by court order. Until May 12, 1953, when Mattison's shares were turned into the company for cancellation, Mattison was the sole stockholder of the company and the owner of the shares in his possession.

From the foregoing Findings of Fact, the Court draws the following:

## Conclusions of Law

## I.

The manner of taxing the gain which Mattison received from the liquidation of the Westcott Oil Company is set forth in Section 115(c) of the Internal Revenue Code of 1939, which provides:

“Distributions in Liquidation—Amounts distributed in complete liquidation of a corporation shall be treated as in full payment in exchange for the stock, and amounts distributed in partial liquidation of a corporation shall be treated as in part or full payment in exchange for the stock \* \* \*”

## II.

Section 115(c) being applicable to the instant liquidation, the distribution to Mattison in the net amount of \$1,379,275.18 during 1952, under Section 39.115 of Regulation 118 promulgated by the Commissioner, must be first applied against the cost basis of the shares which he had acquired in the company. The amount by which the fair market value of the assets distributed to Mattison in 1952 exceeded the cost basis of his shares is taxable to plaintiffs in 1952.

## III.

The distribution to Mattison during 1952 having reduced the cost basis of his shares in the company to zero, the entire net distribution made to Mattison in May and November of 1953, totaling \$102,823.49 is taxable to plaintiffs in that year.

## IV.

Considerably more than six months having expired between the date upon which Mattison acquired the remaining stock of the Westcott Oil Company and either the receipt of the final distribution in liquidation or the cancellation of these



shares, the gain realized by Mattison in 1953 qualifies under Section 117 of the Internal Revenue Code as a long-term capital gain.

V.

The entire gain of \$102,823.49 received by plaintiffs in 1953 being taxable to them in that year as a long-term capital gain, the Commissioner's determination that the major portion of this gain is taxable to plaintiffs in 1952 as short-term capital gain is erroneous.

VI.

The assessment of taxes and interest made by the District Director of Internal Revenue, District of Idaho, against plaintiffs on June 21, 1956, totaling \$53,461.89 is erroneous and the claim for the refund of this amount which was filed by plaintiffs with the District Director on July 10, 1956, should have been allowed and paid.

VII.

There is an overpayment of income taxes and interest in the amount of \$53,461.89, and plaintiffs are entitled to a refund in that amount together with interest thereon as allowed by law. Plaintiffs are accordingly entitled to judgment for such amount against the United States.

Dated this 29th day of July, 1958.

/s/ FRED M. TAYLOR,

United States District Judge.

Presented by:

/s/ WILLIS E. SULLIVAN,  
Attorney for Plaintiffs.

Lodged July 24, 1958.

[Endorsed]: Filed July 29, 1958.

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United States District Court for the District  
of Idaho, Southern Division

Civil Action No. 3315

FRANK N. MATTISON and IDA G. MATTISON,  
Plaintiffs,

vs.

UNITED STATES OF AMERICA,  
Defendant.

### JUDGMENT

This matter having come on regularly for trial without a jury before the Honorable Fred M. Taylor, a judge of the above-entitled court, on September 10, 1957; plaintiffs appearing by Willis E. Sullivan of Boise, Idaho, and Woolvin Patten of Seattle, Washington, their attorneys, and the defendant appearing by Ben Peterson, United States Attorney for the District of Idaho, and Thomas Foye, Attorney, Tax Division, Department of Justice, the parties having produced testimony and other evidence in support of their respective contentions as reflected in the pleadings filed herein, and the parties

having submitted written briefs in argument, the Court being satisfied of its jurisdiction over the parties and the subject matter of this proceeding, having considered all the evidence and briefs herein, having rendered its memorandum opinion on July 2, 1958, having heretofore signed written findings of fact and conclusions of law and being fully advised in the premises:

It is, therefore, Ordered, Adjudged and Decreed that plaintiffs have and recover judgment against the defendant in the sum of \$53,461.89, plus interest as provided by law.

Dated this 29th day of July, 1958.

/s/ FRED M. TAYLOR,  
District Judge.

Presented by:

/s/ WILLIS E. SULLIVAN,  
Attorney for Plaintiffs.

Lodged July 24, 1958.

[Endorsed]: Filed July 29, 1958.

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[Title of District Court and Cause.]

### NOTICE OF APPEAL

Notice Is Hereby Given that the United States of America, defendant above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from that certain Findings of Fact and

Conclusions of Law, and Judgment, and the whole thereof, dated and filed July 29, 1958, in the above matter.

/s/ BEN PETERSON,

United States Attorney for  
the District of Idaho.

[Endorsed]: Filed September 26, 1958.

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[Title of District Court and Cause.]

MINUTE ENTRY

September 10, 1957

(Judge Clark)

This cause came on for trial before the Court, sitting without a jury, Willis Sullivan and Wolvin Pattin, Esqs., appeared as counsel for the plaintiff, and Thomas H. Foye, Esq., appeared as counsel for the defendant.

After hearing counsel on defendant's motion for leave to amend answer, the motion was granted and amendment to answer filed.

After a statement of the cause by counsel G. J. Gardner, C. J. Wescott, and Frank N. Mattison, were sworn and testified as witnesses and other evidence was introduced on the part of the plaintiff, and the deposition of Frank N. Mattison was ordered published.

Further trial of the cause was continued until 10 o'clock a.m. Wednesday, September 11, 1957.

[Title of District Court and Cause.]

MINUTE ENTRY

September 11, 1957

(Judge Taylor)

This cause came on for trial before the Court, sitting without a jury, Willis Sullivan and Woolvin Patten, Esqs., appeared as counsels for the plaintiff, and Thomas H. Foye, Esq., appeared as counsel for the defendant.

Frank N. Mattison, W. F. Miller, and Joe B. Dollard, were sworn and testified as witnesses on the part of the plaintiff, and here the plaintiff rests.

Freda Costella, Charles O. Peterson, Jr., and W. D. Eberle, were sworn and testified as witnesses and other evidence was introduced on the part of the defendant, and here the defendant rests and both sides close.

Upon agreement of counsel, it was ordered that argument be submitted on brief, the opening brief to be filed within 30 days after filing of transcript, the answering brief to be filed within 30 days thereafter, and reply brief filed within 10 days.

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[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME

Comes Now the defendant United States of America, acting through Kenneth G. Berquist, Assistant

United States Attorney for the District of Idaho, and moves the court for an order extending the time within which to file the record on appeal and docket the appeal in the United States Court of Appeals for the Ninth Circuit, up to and including December 24, 1958, on the grounds that said appeal is being prepared by the Department of Justice in Washington, D. C., and that the Department does not have sufficient time within which to designate the record and make the statement of points within 40 days from the date of the filing of the Notice of Appeal.

/s/ KENNETH G. BERQUIST,  
Assistant U. S. Attorney.

### Order

Good cause appearing therefor,

It Is Ordered that the time within which the record on appeal may be filed and the appeal docketed in the United States Court of Appeals for the Ninth Circuit be, and the same hereby is extended to November 27, 1958.

Dated this 31st day of October, 1958.

/s/ FRED M. TAYLOR,  
District Judge.

[Endorsed]: Filed October 31, 1958.

In the District Court of the United States in and  
for the District of Idaho, Southern Division

No. 3315

FRANK N. MATTISON, Et Ux.,

Plaintiff,

vs.

THE UNITED STATES OF AMERICA,

Defendant.

Honorable Fred M. Taylor, Judge

REPORTER'S TRANSCRIPT  
OF PROCEEDINGS

For the Plaintiff:

WOOLVIN PATTEN, ESQ.

For the Defendant:

THOMAS FOYE,

Tax Division,

United States Department of Justice,

Washington, D. C.

September 10, 1957, 10:30 o'Clock A.M.

The Clerk: Frank N. Mattison, et ux., vs. The  
United States of America, Number 3315.

Mr. Ben Peterson: May it please the Court, I  
would like to move the admission of Mr. Thomas  
Foye. He is previously vouched for.

The Court: The motion will be granted, he is  
admitted.

Mr. Peterson: Thank you, your Honor.

(Mr. Foye was sworn by the Clerk.)

The Court: Since yesterday, gentlemen, I have considered this motion to amend the defendant's answer. I am going to grant the motion. I do not think that it makes a great deal of difference to the issue. Should the plaintiff find that it might be prejudicial in any way and he might need more time the time will be granted.

Mr. Woolvin Patten: In that connection, your Honor, I am preparing a reply. May I have permission to file my reply a little later?

The Court: Yes, you may. I doubt that it is a counterclaim, Mr. Patten. Are you ready to proceed, gentlemen?

Mr. Patten: Plaintiff is ready, your Honor.

Mr. Thomas Foye: The defendant is ready, your Honor. [5\*]

Mr. Patten: Your Honor, the plaintiff's opening statement will be very brief here. We have been over this a number of times before. In essence, the plaintiff will attempt to prove that these transactions occurred in the manner reported in the Returns, and in the manner described in the plaintiff's complaint. Our proof will consist very largely of documentary evidence; the documents of the corporation; the stock transfer books; and the legal documents which we will admit pursuant to a stipulation.

The remainder of the evidence will consist of oral testimony, corroborating the documentary evidence.

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\*Page numbering appearing at top of page of original Reporter's Transcript of Record.



This evidence, as you will recall, will prove that in 1951, or thereabouts, the stockholders of the Wescott Oil Company, and at that point I would like to make an observation, to avoid confusion later. The Wescott Oil Company is a corporation which was dissolved. The business formerly carried on by the Wescott Oil Company is now operated by the Wescott Oil Corporation, which is a wholly owned subsidiary of the Continental Oil Company. We may, to avoid confusion refer to the Wescott Oil Corporation as Continental. In any event, for a number of specific reasons the stockholders of the Wescott Oil Company became desirous of selling their shares. Mr. Wescott, the principal stockholder of this corporation, negotiated with several sources to find a market for these shares. [6] These negotiations broke down sometime around the winter of 1951, because the prospective purchasers did not want to pay the price that Mr. Wescott and the other stockholders wanted. At that time a Mr. Frank N. Mattison purchased the shares of Mr. Wescott and the other stockholders and proceeded to liquidate the corporation and to sell the assets, which he received as a result of such liquidation to the Continental Oil Company, or its subsidiary, Wescott Oil Corporation.

Now, frankly, at the time Mr. Mattison bought the shares from the stockholders he didn't have \$1,300,000 to pay them. He used the proceeds from this sale to pay off the stock which was in the escrow at the bank, the Security Bank, here. This was a very sizeable corporation, and they proceeded to liquidate the corporation in a manner which was expedient

with the size of the corporation and the interests involved.

During the year 1952 Mr. Mattison received, as a result of this liquidation \$1,689,399.07; he paid corporate obligations of \$310,123.89; realizing a net amount of \$1,379,275.18; that the cost of shares to him was \$1,352,321.82; that after allowing expenses incurred in connection with this transfer of \$3,677.07; he realized a profit in 1952 of \$23,276.29 which he properly accounted for in his return for that year, partially as a long term capital gains and [7] partially as a short term capital gain.

When it was certain that all the debts of the corporation had been paid and that all claims had been received the corporation was dissolved. As a result Mr. Mattison received \$101,585.76 in cash. He received some shares of the Lily Seed Company with a market value of \$1,000; and somewhat later he received an insurance refund due the corporation of \$275.90; that he reported the entire \$102,861.66 in his return for the year 1953 as a long term capital gain.

Thereafter the Commissioner assessed against Mr. Mattison a tax of \$69,257.45 for the calendar year of 1952, plus interest in the amount of \$13,584.89 and allowed him a credit against this assessment of \$29,382.45, said credit being based on the determination by the Commissioner that Mr. Mattison had overpaid the 1953 tax.

Mr. Mattison has filed a proper claim for refund and now institutes this suit for a refund.

I would like at this point to file a stipulation

which has been agreed to between the attorney for the plaintiff and the defendant.

The Court: It may be filed. Do you care to have this stipulation appear in the record, Mr. Patten, in the Reporter's Record?

Mr. Patten: I think that just being filed would be [8] satisfactory, your Honor.

The Court: Very well.

Mr. Patten: It might be of some help to the Court for me to list them. Exhibit A, under the stipulation, are the Returns of Frank N. and Ida G. Mattison for the calendar year 1952.

The Clerk: We generally mark by number.

Mr. Patten: Plaintiff's Exhibit No. 1.

Mr. Foye: May it please the Court, I wonder if for the purpose of convenience we might have the exhibits marked as they are designated on the stipulation?

The Court: They are referred to by letters in the stipulation?

Mr. Foye: Yes, your Honor.

The Court: They may be filed as Exhibits A, B, etc.

Mr. Patten: Exhibit B, under the stipulation is the Individual Income Tax Return of Frank N. and Ida G. Mattison for the calendar year 1953.

Exhibit C, under the stipulation, is a Corporation Income Tax Return for the Wescott Oil Company for the calendar year 1952.

Exhibit D of the stipulation, is the corporation Income Tax Return of the Wescott Oil Company for the calendar year 1953.

Exhibit E of the stipulation is a certified and [9]

attested copy of the corporation records, corporation petition for incorporation and the certificate of the Allen Oil Company, and the amendment changing the name to the Wescott-Allen Oil Company, and a final amendment changing its name to the Wescott Oil Company.

Exhibit F is a certified and authenticated copies of the judgment and decree of the District Court of the Third Judicial District, State of Idaho, in and for this County, dissolving the Wescott Oil Company; a certified copy of the notice which was published in the local press; a copy of the notice and a copy of the petition for dissolution.

Exhibit G is an Offer and Purchase Agreement, dated May 12, 1952, executed between the Continental Oil Company and Frank N. Mattison.

Exhibit H is a collection of 17 Option Agreements, executed by the same number of stockholders of the Wescott Oil Company in favor of Frank N. Mattison, dated, generally, from May 22, to the last of May.

Exhibit I are letters from Frank N. Mattison to the same stockholders giving them notice of his election to exercise the options which had been granted.

Exhibit J is the Minute Books of the Wescott Oil Company. I might mention that these are not complete Minute Books, they only cover the portion which is here in [10] question.

Exhibit K is a large group of Assignments, Deeds, and other legal documents conveying a great deal of personal and real property from the Wescott Oil Company to Mr. Frank N. Mattison, dated June 16,

1952. I can offer the Court no assurance that they are absolutely complete but the remainder would be substantially identical with these.

Exhibit L is a similar list of legal documents, conveying these same assets from Mr. Frank N. Mattison to the Wescott Oil Corporation.

Exhibit M is the Stock Transfer Book of the Wescott Oil Company.

Exhibit N is three checks of the Wescott Oil Company, dated March 12, 1953, and May 12, 1953.

Exhibit O is the Cash Book of the Wescott Oil Company for the year 1952 and 1953.

Exhibit P is a deposit slip showing the deposit of \$289,399.07 to the bank account of Frank N. Mattison on June 27, 1952, and a voucher further describing the deposit.

Exhibit Q is the deposit slip showing the deposit on May 13, 1955, of \$1,000 to the bank account of Frank N. Mattison.

The Court: Under the stipulation Exhibits A to Q, inclusive, will be admitted. [11]

(The documents referred to were marked Plaintiff's Exhibits A to Q and were received in evidence.)

Mr. Patten: By informal agreement between counsel, I would like to offer in evidence a Notice of Assessment, issued by the Internal Revenue Service on June 22, 1956, against Frank N. and Ida G. Mattison.

The Court: It may be marked as Exhibit R, if there are no objections. Are there any objections?

Mr. Foye: No objection, your Honor.

The Court: Exhibit R may be admitted.

(The document referred to was marked Plaintiff's Exhibit R and was received in evidence.)

Mr. Patten: I would like to offer a notice received from the Internal Revenue Service, on the same date, further explaining the credit which was allowed on Exhibit R.

Mr. Foye: No objection to that, your Honor.

The Court: Exhibit S may be admitted. What is that, Mr. Patten?

Mr. Patten: Notice of Adjustment, sir.

(The document referred to was marked Plaintiff's Exhibit S and was received in evidence.)

Mr. Patten: I would further like to offer a Statutory Notice, dated February 10, 1956, received by Frank N. and Ida G. Mattison for the Internal Revenue [12] Service, commonly known as a Ninety-Day Letter.

Mr. Foye: May I see that, Mr. Patten?

Mr. Patten: Certainly.

Mr. Foye: No objection, your Honor.

The Court: Exhibit T may be admitted.

(The document referred to was marked Plaintiff's Exhibit T and was received in evidence.)

Mr. Patten: I would like to offer a letter, dated February 6, 1955, commonly known as a Thirty-Day Letter, received by Frank N. and Ida G. Mattison

from the Internal Revenue Service. I would like to stipulate that there are certain pencil notations which appear on this that were placed there by Mr. Mattison later.

Mr. Foye: No objection.

The Court: Exhibit U may be admitted.

(The document referred to was marked Plaintiff's Exhibit U and was received in evidence.)

Mr. Patten: I would like to also offer—by way of explanation I just located this document—an Assignment, dated June 10, 1952, whereby the Continental Oil Company assigned the Option Agreement, which has been admitted as Exhibit D, to the Wescott Oil Corporation.

Mr. Foye: I have no objection. Do you have a copy of it? Could we stipulate that the document may later be withdrawn for photostating, your Honor? [13]

Mr. Patten: Yes.

The Court: Yes. Being no objection, exhibit V may be admitted.

(The document referred to was marked Plaintiff's Exhibit V and was received in evidence.)

Mr. Patten: I would like to call Mr. Gardner to the stand.

Mr. Foye: May I have an opportunity to make an opening statement, Mr. Patten?

Mr. Patten: Yes, sir. Pardon me.

Mr. Foye: May it please the Court. I do think it will be necessary to go into the facts of this transaction in detail. I might state that I am in substantial agreement with the facts as Mr. Patten stated them. There are some things which he did not cover, for instance; the fact that Mr. Wescott had substantial negotiations with Continental Oil Company in 1951 and 1952, some of which the evidence will show that Mr. Mattison was a participant in. The only other note I have is that since this transaction was carried out by, and is the matter of the peculiar knowledge for the plaintiff and the other witnesses in this case will be called on behalf of the plaintiff, the Government's case will be made through cross-examination of the witnesses.

Mr. Patten: I want to state that I agree with the [14] facts that Mr. Foye has added to my opening statement.

G. J. GARDNER

a witness called on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: G. J. Gardner.

Direct Examination

By Mr. Patten:

Q. Where do you live, Mr. Gardner?

A. In Boise, Idaho.

Q. And what is your occupation, sir?



(Testimony of G. J. Gardner.)

A. I am Vice-President and Trust Officer of the First Security Bank of Idaho.

Q. And in such a capacity do you have custody of records in the bank?      A. I do.

Q. You have received a subpoena issued by the plaintiff in this action?      A. Yes, sir, I have.

Q. We have asked you to bring certain records?  
A. Yes.

Q. You have those records?      A. I have.

Q. Are those records kept in the ordinary [15] course of business by the bank?      A. Yes.

Mr. Patten: May I approach the witness, your Honor?

The Court: Yes, you may.

Mr. Patten: Your Honor, we would like a stipulation that the originals of these may be withdrawn and photostatic copies substituted.

The Court: Very well. There is no objection.

Q. (By Mr. Patten): Do these records relate to an Escrow Agreement between Frank N. Mattison and certain stockholders of the Wescott Oil Company?

The Witness: Yes.

Mr. Patten: I ask that these documents be marked for identification, please.

The Clerk: Plaintiff's Exhibit W.

(The document referred to was marked Plaintiff's Exhibit W for identification.)

Mr. Patten: I ask that this card be marked Plaintiff's Exhibit, next in order.

(Testimony of G. J. Gardner.)

The Clerk: Plaintiff's Exhibit X.

(The document referred to was marked Plaintiff's Exhibit X for identification.)

Mr. Patten: Also, this one. [16]

The Clerk: Plaintiff's Exhibit Y.

(The document referred to was marked Plaintiff's Exhibit Y for identification.)

Q. (By Mr. Patten): Referring to the document which has been marked for identification as Plaintiff's Exhibit W, I wonder if you will explain what that document is?

The Witness: This is a record made up on the stock that was received from various individuals, the number of shares, the amount they were to receive less the tax, and the net amount distributed to them.

Q. Let us go across. The first column, what does that show?           A. The number of shares.

Q. And the next column, what does it show?

A. The amount per share they were to receive.

Q. No, it appears to be the name of the individual.           A. I was—yes.

Q. To Whom Issued.

A. The second column is the party who owned the stock, what name the stock was issued in.

Q. And the next?

A. The number of shares of stock that was owned.

Q. And the next column?

(Testimony of G. J. Gardner.)

A. Is the amount per share they were to receive. [17]

Q. And the next column?

A. The total amount they were to receive for the number of shares deposited.

Q. And the next column?

A. The tax that was deducted from the individual.

Q. And the last column?

A. The net amount they received after the deduction of taxes.

Q. In other words, the last column is the net amount which was paid to the stockholder?

A. That is correct.

The Court: Just a moment. When you speak of tax, Mr. Gardner, that is the Transfer Tax?

The Witness: Yes, sir.

Q. (By Mr. Patten): And the last column, sir?

A. The last column is bank information only as to where the money was distributed.

Q. In other words, certain of the shares are deposited as collateral? A. That is correct.

Mr. Patten: I offer Exhibit W in evidence.

Mr. Foye: Your Honor, since we do not have copies, I wonder if I may go over it as Mr. Patten goes over it, to save time. I have no objection to Exhibit W, this top [18] sheet.

The Court: It may be admitted.

Mr. Patten: May I withhold the offer and ask about the second sheet?

The Court: Very well.

(Testimony of G. J. Gardner.)

Q. (By Mr. Patten): There is a second sheet attached to Exhibit W, will you tell us what that is, sir?

The Witness: That is a record of the actual payments—the net payment that was made for the benefit of each individual stockholder.

Q. Now, how was that amount paid, sir?

A. Cashier's checks were issued by the bank directly to them, or to the bank for their account if they happened to owe it to the bank.

Mr. Patten: Now, I would like to reoffer Exhibit W.

Mr. Foye: That is both sheets, Mr. Patten?

Mr. Patten: Yes.

Mr. Foye: No objection.

The Court: Exhibit W may be admitted.

(The document referred to was marked Plaintiff's Exhibit W and was received in evidence.)

Q. (By Mr. Patten): I am handing you a document which has been marked for purposes of identification as Plaintiff's [19] Exhibit X, can you tell us what that is?

The Witness: This is a card, we set up the incoming escrows, this was set up to show the amount each stockholder had coming.

Q. In other words this shows the receipt of shares from the stockholder and how much he drew for their surrender, is that correct?

A. That is correct.

(Testimony of G. J. Gardner.)

Mr. Patten: I would like to offer Exhibit X in evidence.

Mr. Foye: May I ask him a couple of questions on voire dire?

The Court: Yes, you may.

Voire Dire Examination

By Mr. Foye:

Q. Mr. Gardner, will you tell me how this document differs from the first column on Exhibit W, please?

The Witness: I think they are identical.

Q. They are the same?

A. Yes, they are the same.

Q. The first three, as a matter of fact, on Exhibit W?

A. Yes, that is correct. I forgot the arrangement there. That is correct.

Q. Would you like to see this? [20]

A. Maybe I'd better. (Examining the document in question.) Not the first three, its three, four, and five, I started here, Mr. Patten.

Q. Well, in order to get it straight, these two documents, Exhibit W and X, the number of shares, the price paid for the shares, and the amount owing to the individual stockholders are all identical?

A. That is correct.

Q. Now—that is all, thank you.

Mr. Foye: No objection to Exhibit X, your Honor.

The Court: Exhibit X may be admitted.

(Testimony of G. J. Gardner.)

(The document referred to was marked Plaintiff's Exhibit X and was received in evidence.)

Direct Examination

(Continued)

By Mr. Patten:

Q. Handing you a document which has been marked for identification as Plaintiff's Exhibit Y, can you tell us what that is?

The Witness: This is a receipt from Frank Mattison for a certificate for 2,189 shares of the common stock of the Wescott Oil Company, issued in the name of Frank Mattison.

Mr. Patten: I would like to offer Exhibit Y.

Mr. Foye: May I ask a couple of questions?

The Court: Yes, you may. [21]

Voire Dire Examination

By Mr. Foye:

Q. Mr. Gardner, is this also a request from Mr. Mattison that you surrender to him the certificates standing in his name of the 2,189 shares of the Wescott Oil Company?

The Witness: Yes, it is.

Q. And pursuant to that request you surrendered that certificate to him, did you? A. We did.

Q. On June 16, 1952? A. Yes.

Mr. Foye: Thank you. No objection, your Honor.

The Court: Exhibit Y may be admitted.

(Testimony of G. J. Gardner.)

(The document referred to was marked Plaintiff's Exhibit Y and was received in evidence.)

Direct Examination

(Continued)

By Mr. Patten:

Q. Now, Mr. Gardner, do you know how the—you say that certified checks were issued to the stockholders in the amount of \$1,135,000, is that correct, sir?

The Witness: That is correct.

Q. And certain stock transfer taxes and incidental expenses were paid?

A. That is correct. The Stock Transfer Tax was paid. [22]

Q. Do you know where the bank received the funds to make the payment?

A. No, I don't. It came in by check from someone from someplace, but I don't remember.

Q. Do you know the amount of the check that came in, sir?

A. I can't tell you that positive. I believe \$1,135,000. I'm not positive on that figure.

Q. Do you know whether a payment was made to the Note Department in a very substantial amount on the same day? A. Yes, there was.

Q. Do you know the amount of that payment?

A. If I recall correctly, it was \$265,000.

Q. You have made a search for that check, have you not, sir? A. We certainly have.

Mr. Patten: You may inquire.

(Testimony of G. J. Gardner.)

Cross-Examination

By Mr. Foye:

Q. Mr. Gardner, Exhibit X, which you stated was what again please, sir?

A. The record of the number of stock certificates received from each individual and the amount due for each share and the total amount they were to receive. [23]

Q. And Exhibit W, again, please?

A. That is a record of the owner of the stock and number of shares he owned, and the amount he was to receive, and the total amount he was to receive for those shares, less the Transfer Tax, and the net amount that he received.

Q. Can you tell me from an examination of these documents, Mr. Gardner, whether all of the stockholders of the Wescott Oil Company were to receive the same price for their shares?

A. (Examining the document): No, they were not.

Q. How was it to differ?

A. Mr. Wescott was to receive a different amount for his certificates.

Q. For all of his stock?

A. For all of his—let's see here.

Q. I think Mr. Westcott has some certificates here.

A. They are for Trustee, for 607 shares of his stock he received a different figure.

Q. Can you tell from the document whether that



(Testimony of G. J. Gardner.)

is all of the stock he owned outright in his own name?

A. No, our records show he owned additional stock.

Q. And he was to receive what price for that stock, sir?

A. The same as the others, 607-63.

Q. Thank you, sir. Now, do you know, sir, what [24] the purpose of surrendering to Mr. Mattison the one certificate of stock referred to in Exhibit Y was?

A. I can't rightly tell you what the purpose of that was. We—I knew nothing about the transaction except to follow our escrow instructions.

Q. You didn't know then what the purpose of surrendering that to him was?

A. No, I can't say that I did.

Q. As far as you know, Mr. Gardner, did your bank follow out the terms of the escrow instructions as they were spelled out in the escrow instruction?

A. As far as I know, we did. I didn't hear any complaint.

Q. Mr. Gardner, do you have an idea at all, when payment was received by your bank for the stock that was in escrow there?

A. Will you repeat the question?

(The last question was read by the Reporter.)

A. The records indicate it was June 16.

Q. Your records indicate that you received payment on June 16, sir?

A. 1952.

(Testimony of G. J. Gardner.)

Q. You have no records showing the manner or from whom it was received?

A. I could not find it, sir. [25]

Q. Do you have a personal recollection of the fact, Mr. Gardner?      A. No, I don't.

Q. You don't recall who paid that money to you, or how it was paid to you?

A. I'd like to make one word of explanation. This escrow was actually handled through an Escrow Teller that we have and I did not do the actual detail of it.

Q. What was his name?      A. Mr. Morris.

Q. M-o-r-r-i-s?      A. That is right.

Q. Would he be the individual who received the payment that was to be distributed to the various stockholders, sir.

A. He would have received it.

Q. Is he still employed by your bank?

A. Yes, he is.

Q. I am not sure if this is in the record or not, do your records show the date you distributed this money to the stockholders?

A. Yes, it shows it was distributed on June 17, 1952.

Q. Does that show in any of the records that are in evidence, Mr. Gardner?

A. Yes, it does, on the yellow card, it shows on [26] the back, "Paid, June 17, 1952."

Q. And that refers to the distributions to the various stockholders?      A. Yes, sir.

The Court: I assume, Mr. Gardner, when you

(Testimony of G. J. Gardner.)

refer to the 16th and 17th of June you are talking about 1952? A. 1952, yes, sir.

Q. (By Mr. Foye): I think you stated on direct examination, sir, that your recollection was that your bank had received about \$1,135,000 to distribute to the stockholders, is that right?

A. That is right. That's what shows went through our Escrow Department.

Q. Is that shown as disbursements or receipts in your Escrow Department?

A. It shows as disbursements.

Q. You have no record of receipts?

A. I have not.

Q. Would it always be necessarily true that the disbursements were equal to the receipts in this situation?

A. They wouldn't have to, they could be different.

Mr. Foye: I have no further questions. [27]

### Redirect Examination

By Mr. Patten:

Q. Do you recall whether the bank retained the original shares which they received from the stockholders in exactly that form during the entire period of escrow?

A. I—I don't know. I—I really can't tell you. I think we did during the period of the escrow, I don't know on that, I can't tell you.

Q. You don't know.

Mr. Patten: That is all.

(Testimony of G. J. Gardner.)

Recross-Examination

By Mr. Foye:

Q. You have no records, Mr. Gardner, showing when you distributed the various certificates of stock, or what you did with them?

A. I didn't locate those records.

Q. Did you look for them?

A. I did not look for them, no, sir. I didn't know they would be required. I didn't make any search for them.

Q. Do you know whether or not the bank has such records?

A. I don't know whether we can locate them or not.

Mr. Patten: I will offer to stipulate that [28] these original shares were, on or about June 10, surrendered to Mr. Mattison and that a new certificate evidencing ownership of 2,189 shares was issued in the name of Frank Mattison and was substituted in the Escrow Department.

Mr. Foye: You say those original shares were surrendered to Mr. Mattison?

Mr. Patten: Yes, and surrendered to the corporation and a new certificate was issued on June 10, a single certificate of 2,189 shares was issued by the Escrow Department.

Mr. Foye: And these individual shares were surrendered to the corporation sometime about June 10?

Mr. Patten: Yes.

Mr. Foye: Thank you. That will be fine.

The Court: Do you have the stipulation, Mr. Reporter?

The Reporter: Yes, sir, I have.

The Court: Very well, it is so stipulated. Before you proceed we will take our morning recess.

(The witness left the stand.)

(A short recess was taken.)

The Court: You may call your next witness.

Mr. Patten: Mr. Gardner was going to have Mr. Morris come over. Would it be satisfactory to interrupt to put him on? [29]

The Court: Yes, you may.

Mr. Patten: If it would help the Government, I would be willing to stipulate, although neither one of us can prove it by the bank at this point, that on or about June 16, the bank received a check in the amount of \$1,400,000 from the Continental Oil Company.

Mr. Foye: I will agree.

Mr. Patten: That \$256,000 and some odd cents of this amount was credited to a note which was owed—that \$265,000 was credited to a note which was owed by the Wescott Oil Company.

Mr. Foye: To the bank.

Mr. Patten: To the bank. And the remainder of approximately \$1,135,000 was turned over to the Escrow Department.

Mr. Foye: That is fine with me.

The Court: It may be so stipulated.

Mr. Patten: Mr. Wescott, please.

## C. J. WESCOTT

a witness called on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: Will you state your name for the record, please?

The Witness: C. J. Wescott. [30]

## Direct Examination

By Mr. Patten:

Q. What is your address, Mr. Wescott?

A. I believe you'd better get closer, Mr. Patten, I can't hear very well.

Q. What is your address, sir?

A. My address?

Q. Yes, sir. A. 819 North 17th, Boise.

Q. And what is your present occupation?

A. I am President of the Wescott Oil Corporation.

Q. Do you know who owns the Wescott Oil Corporation?

A. The Continental Oil Company, wholly.

Q. It is a wholly owned subsidiary?

A. Yes, wholly owned.

Q. Now, how long have you been in the oil business, Mr. Wescott?

A. Well, that will be a surmise. I would say 40 years.

Q. Now, Mr. Wescott, do you have a nickname?

A. "Ike," is my nickname.

Q. Are you familiar with a corporation known

(Testimony of C. J. Wescott.)

as the Wescott Oil Company? A. Yes.

Q. That is an entirely separate company from the [31] Wescott Oil Corporation?

A. That is true.

Q. When did you become connected with the Wescott Oil Company?

A. In 1926. However, it was known then as the Wescott-Allen Oil Company.

Q. And in 1926, what was your connection with the Wescott Oil Company?

A. I was the President.

Q. Did you own any stock in it?

A. About 20 per cent.

Q. And who owned the other 80 per cent?

A. The Continental Oil Company.

Q. Now, how long were you President of the Wescott Oil Company? A. Until 1952.

Q. Would that possibly be 1953?

A. It could be—it would be. I'm not certain on those dates.

Mr. Foye: I will stipulate it was 1953.

The Witness: I would be President up until the dissolution.

Mr. Patten: Yes, sir.

The Witness: Right. [32]

Q. (By Mr. Patten): At any time after 1926, was there a change in the ownership and control of the Wescott Oil Company? A. Yes, in 1945.

Q. What was that change, sir?

A. I bought out the entire stock of the Continental Oil Company.

(Testimony of C. J. Wescott.)

Q. And became the sole stockholder of the Wescott Oil Company?      A. Yes.

Q. Now, did you sell any of these shares?

A. Yes.

Q. And to whom did you sell them?

A. I don't know if I can name them all now. I sold them to Jack Simplot, to Lynn Driscoll, to—some to my sister, some to John Eckstein—haven't you a list off stockholders there?

A. Yes, the list is in the record. At what price did you purchase these shares from the Continental Oil Company?      A. I believe \$193.65.

Q. And at what price did you sell them for to the other stockholders?      A. At the same price.

Q. Do you know why the shares of stock [33] became available in 1945?

A. Well, in 1945 the Continental Oil Company sold all of their holdings to the General Petroleum Company. I might tell you that all of the holdings, **except** ours, they sold all of the holdings in their own company.

Q. Yes, sir.

A. And then they came to me and wanted to know if I wanted to buy their portion. In other words they were withdrawing from the territory west of Twin Falls.

Q. And why were they withdrawing from the territory west of Twin Falls?

A. Well, they told me their reason was they didn't have their own product here and were not competitive.



(Testimony of C. J. Wescott.)

Q. Now, during its years of operations, has the Wescott Oil Company been a profitable operation?

A. Yes.

Q. Would you say very profitable? A. Yes.

Q. At any time since 1945, have you or the other stockholders been interested in selling your shares?

A. Yes.

Q. Why were you interested in selling these shares—first, when did you become interested in selling your shares?

A. Well, I became interested after I had a stroke.

Q. Yes, sir. [34] A. I was a sick man.

Q. And—

A. My estate was in poor shape.

Q. When did you have your illness, sir?

A. I cannot point that. It was after we bought the stock and the illness progressed and we had no opportunity at that time to sell that stock that I knew of.

Q. Now, did you know if the other stockholders were interested in selling?

A. Yes, I know they were.

Q. And why were they interested in selling?

A. They were probably interested in my health. I was probably the key man there. At one time one of the stockholders asked me if I couldn't sell it. He said, "You can sell to more advantage than any one of us."

Q. Was there any reason besides your health

(Testimony of C. J. Wescott.)

that you, or the other stockholders, might have been interested in selling your shares?

A. You mean besides my health?

Q. Yes, besides your health.

A. Well, I know one or two that had large obligations and that they wanted to dispose of it for that reason.

Q. Were there any other business reasons why the stockholders and yourself were interested in selling your shares? [35]

A. I can't think of it—unless its profit.

Q. Were there any reasons or competition about that time?

A. Well, the competition arose in '51, yes.

Q. Yes.           A. Yes.

Q. Did that have any effect on your desires to sell your shares?

A. Well, yes. In order to compete we had to borrow at least a million dollars. We didn't have that kind of credit.

Q. Why did you need a million dollars?

A. To compete with the companies coming in. We knew their program, they were coming in with a pipeline and we knew they were going to dot the state with new service stations—up-to-date service stations—ours were not, and we would have to rehabilitate practically our whole company.

Q. Now, when did your desires to sell your shares crystalize to the point that you started doing something about it?           A. In '51.

(Testimony of C. J. Wescott.)

Q. And what efforts, if any, did you make toward selling your shares, sir?

A. Let me describe it in my own way. [36]

Q. Yes, sir.

A. Sometime in '51, the Continental Oil representative called at my office.

Q. Who was that?

A. Mr. Lentz, L-e-n-t-z, Joe Lentz, and wanted to know if we were interested in disposing of our stock and I told him, "Yes." And he said, "We are interested in buying." And he told me why, that they were coming in here with their own products and reentering the territory again, and that they had to have so much gallons for the building of the pipeline from Parco to Salt Lake. And he wanted to know what we wanted for the stock, and I said, "I'll see you in the afternoon." And I talked to one or two—maybe three—of the larger stockholders and when he came back I told him I thought we would be willing to sell on this basis of \$500 a share in a trade for Continental stock. These negotiations were more or less simmering around and died down.

Q. How many shares, at that time, of Continental would you have gotten on the basis?

A. Well, I didn't figure it myself but I understand it was about ten-to-one. We would have traded our shares at \$500 for their average market shares. What that figured out, I don't know, but I understand it was about ten-to-one.

Q. And were those negotiations successful? [37]

A. No.

(Testimony of C. J. Wescott.)

Q. What happened?

A. Well, they held it in abeyance for some reason. I don't know what happened.

Q. What did they tell you?

A. Well, they were always—they didn't want me off the hook exactly, but they were still negotiating on something, pipelines, or something.

Q. And do you recall the precise reason those negotiations broke down?

A. Well, they did not completely break down, not until—they broke down in '52, I believe.

Q. Do you recall about what time they broke down?

A. No. I don't understand your question.

Q. About what time did you——

A. Well, I'll tell you something——

Q. ——decide——

A. Allow me to finish the story. In the meantime I went to the Phillips Oil Company and tried to dispose of the stock and I made them a price, I don't recall what the price was. I believe the Phillips people would have the record.

Q. I see.

A. I am certain it was under the price that I finally received. [38]

Q. Yes, sir.

A. And their answer was that they thought I wanted too much. In other words, they weren't interested.

Q. Who did you deal with at the Phillips Petroleum Company?

(Testimony of C. J. Wescott.)

A. Mr. Jim Moyle, and he took it up with Ted Lyon at Bartlesville, who, I believe at present is in charge of marketing for the Phillips people.

Q. Did you contact any other oil companies?

A. Yes, sir.

Q. Who else, sir?

A. I contacted the Sinclair Oil, and I—let me get this straight—that's been so long ago—but they were operating, they were purchasing property, they were also interested because they were pioneers in these lines, but they used a broker. Now, that broker's name—it slipped my memory, but I went to see him in response to a letter from him.

Q. Where did the broker live?

A. Salt Lake. He had already purchased property for them. The day I arrived I asked if his people were in a position to do business with me, and he thought they were. The next day he told me they were not interested.

Q. Now, you said that you were discussing with Continental an exchange of your stock—of Wescott Oil stock [39] for Continental stock.

A. That is true.

Q. Why were those negotiations not concluded?

A. For the reason that their stock—we were not willing in other words to trade our stock at \$500 for their stock which had appreciated considerably in the meantime.

Q. In other words you didn't—

A. The basis of the change is where we broke down.

(Testimony of C. J. Wescott.)

Q. Instead of ten shares for one, they wanted to give you seven shares for one?

A. I don't recall the ratio.

Q. Was that the reason the negotiations broke down? A. Yes, on the exchange.

Q. Did you ever discuss with the Continental Oil Company a sale of your shares for a cash price?

A. Yes.

Q. What kind of a cash price did you quote them?

A. Well, that was—well—that was at the same time that our negotiations broke down in the exchange of stock, as I recall it, and then they talked about purchasing the stock.

Q. For a cash price?

A. For a cash price.

Q. And what cash price did you agree on? [40]

A. The cash price was to be approximately \$500 net. They were to pay enough more to take care of the taxes.

Q. And about what price did that figure out at?

A. Six-hundred-seven, or it might have been six-hundred-one, or six-hundred-six, I don't know.

Q. In other words you wanted \$500 plus that amount of tax you would have to pay if you sold them?

A. That is true, to make it hold.

Q. Were they willing to pay that amount?

A. No, they turned that down.

Q. Now, do you recall when Continental turned down your demand for this price?

(Testimony of C. J. Wescott.)

A. I made a deposition the other day and after I made the deposition I find my memory is pretty poor on dates and I am mixed up about two or three months—that was six years ago.

Q. Now, can you come any closer to the date?

A. Yes, I think it was March—or in there someplace?

Q. Yes, early in 1952, is that it?

A. That's correct.

Q. Now, in these negotiations with the Continental Oil Company, and the Phillips Petroleum, and the broker in Denver, did you ever discuss the sale of assets of the Wescott Oil Company? [41]

A. No, we never reached that.

Q. Why didn't you discuss the sale of assets?

A. With those people?

Q. Yes.

A. I wouldn't have any way—but they were disinterested.

Q. As a matter of fact, did you ever discuss with anyone the sale of assets?

A. No, you mean the company sale of assets?

Q. Yes, sir. The sale of assets by the company.

A. No, no.

Q. And why didn't the company want to sell the assets? A. Well, a tax angle.

Q. Yes, sir. Were there any other reasons?

A. I wanted a good clean deal to start out with—and I'm a sick man and I want my money and have everything settled up.

Q. You wanted \$500 per share in your hands?

(Testimony of C. J. Wescott.)

A. That is correct.

Q. During any of these negotiations with Continental Oil Company, was Mr. Mattison present?

A. Yes, yes.

Q. And who is Mr. Frank N. Mattison?

A. At that time he was Secretary of the [42] Wescott Oil Company.

Q. And how long has he been with the Wescott Oil Company?

A. Since 1923. He was there before I was. I have known him since 1926.

Q. Did—and for what purpose did Mr. Mattison attend some of these meetings? Did he attend all of these meetings where you were negotiating?

A. No.

Q. Do you recall any of them?

A. The ones he attended was when I thought the business was starting to jell and I wanted him there to check their figures. He had been furnishing me all of the figures all of the time.

Q. You got mainly profit and loss and balance sheets, did you not?      A. Oh, yes.

Q. Now, when was the first time that Mr. Mattison approached you with an idea of buying your stock?

A. Well, it was after our negotiations had broken down on the sale of the stock. I can't give you the exact date, but it happened in Boise, and I think the way he put it was this way: "Why can't I buy this and liquidate it?"

Q. What price did you quote to Mr. Mattison?



(Testimony of C. J. Wescott.)

A. I quoted him the same price I quoted Continental. [43]

Q. And how did you arrive at that price?

A. Five-hundred plus.

Q. Five-hundred plus taxes?

A. That's right.

Q. Now, did you sell all of your shares to Mr. Mattison at the same price?           A. No.

Q. What shares did you get the \$607 for?

A. For the shares that I had purchased in 1945. I went in on the same footing as all of the rest of them on that.

Q. Now, what price did you get for the other shares?           A. I believe six-sixty.

Q. And these were in the shares you bought back in 1926?           A. That's true.

Q. On what basis did you feel that you were entitled to the shares you bought in 1926?

A. It didn't cost nearly as much. It took more money to make me hold and they were worth more, they were the key stock.

Q. They were the controlling block?

A. The controlling block, that is correct.

Q. And you had to pay more taxes on these?

A. Oh, yes, considerably more. The [44] stockholders knew, there was no slip up on that, they understood that.

Q. They all knew you were going to get a higher price?

A. Oh, yes, yes, there might have been some small ones, but the majority knew.

(Testimony of C. J. Wescott.)

Q. You knew, at that time, that Mr. Mattison didn't have sufficient funds to pay for all of this stock? A. Yes, I knew that.

Q. Did you know that he intended to liquidate the company? A. Yes.

Q. Now, the negotiations which were carried on by Mr. Mattison with the ultimate purchasers of the assets, were they between Mr. Mattison and the purchasers or were those negotiations by you?

A. They were by him. You mean his deal with Continental?

Q. Yes, sir. A. He made that.

Q. Now, were you present at any of the conferences which Mr. Mattison—— A. Yes.

Q. Can you recall which one?

A. Now, I can't recall whether it was one or two.

Q. You recall you were present at at least [45] one? A. At least one, yes.

Q. Now, do you have fairly frequent contacts with the people at Continental Oil?

A. All the time.

Q. In what capacity do you have contacts?

A. In past years, yes, we were a large customer of theirs.

Q. How much oil a year did you buy from Continental?

A. That would be a wild guess. We did, in 1951—we did \$3,800,000 worth of business, and I think we were purchasing, I would say half—maybe half.

Q. Now, do you hold any official position in which you have contacts with Continental Oil?

(Testimony of C. J. Wescott.)

A. Yes, I am President of the Idaho Petroleum Committee.

Mr. Foye: Will you specify what period we are talking about, please?

Q. (By Mr. Patten): How long have you been President of the Idaho Petroleum Committee?

A. I'd say ten years.

Q. Ten years. And in that capacity you have contacts with the people in the oil industry?

A. Yes.

Q. Now, when Mr. Mattison purchased the stock from [46] the other stockholders, did he go out and make the contacts and get the options, or did you do it?

A. He did. I didn't go near them.

Q. Did Mr. Mattison pay you for the shares he purchased from you? A. Did he pay it?

Q. Yes, sir. A. Yes.

Q. Do you recall the manner in which he paid you? A. Yes.

Q. What was it?

A. Well, part of it was a note, and the amount of it I can't recollect. I remember I released the stock and the balance was paid by the Escrow Agent, I believe and put in my account.

Q. Now, sir, at the time you sold your stock to Mr. Mattison, about how many filling stations did the Wescott Oil Company operate?

A. I can't give you that.

Q. Would you guess, sir?

(Testimony of C. J. Wescott.)

A. Well, it would be a guess. I think it's in the record here, somewhere, I don't know.

Q. Generally, where are your properties located?

A. All over southern Idaho and part of Oregon, in fact practically all of Idaho except the panhandle. Now, [47] when you speak of filling stations—

Q. And the bulk plants, how many bulk plants?

A. I think 20, maybe 20, or 21.

Q. Bulk plants? A. Bulk plants.

Q. Do you have any idea of how many pieces of property the corporation owned?

A. I can't give you those figures. If I could refresh my memory, if I could look at the books and tell—but they were considerable.

Q. Now, when the Wescott Oil Company went into dissolution, or rather the Resolution of Dissolution was passed, did you continue as President of the Wescott Oil Company after the dissolution started?

A. Yes—you mean—now, I don't understand your question, Mr. Patten.

Q. When—

A. I was President up to the time it did dissolve.

Q. Yes, sir.

A. Is that what you wanted to know?

Q. Yes, sir. Do you recall, in 1952, that a resolution was passed starting the process of dissolving the corporation? A. Yes, yes.

Q. During the period when the resolution was first [48] passed, until the corporation was finally dissolved, who was President?

(Testimony of C. J. Wescott.)

A. I was, up to the dissolution, the actual dissolution.

Q. And who were the directors of the corporation?

A. The same directors, with the exception of Mr. Driscoll.

Q. Mr. Driscoll had resigned? A. What?

Q. Mr. Driscoll had resigned?

A. Yes, but the rest of the directors were the same as they had been.

Q. Who would they be, sir?

A. There was myself, Mr. Driscoll, Mr. Simplot, Mr. Kramer, and my sister, I believe, and that I think is all.

Q. Now, who had control of the corporation during the period of dissolution, sir?

A. Mr. Mattison owned it.

Q. Yes, sir. Did Mr. Mattison direct you as to how this dissolution was to proceed and—

A. No.

Q. Was—did you receive any instructions or directions from Mr. Mattison as to when the dissolution should be made or when it should be withheld, or anything like that? [49]

A. I don't think I ever consulted with him on that. I consulted with my attorney.

Q. Now, why wasn't the corporation dissolved more promptly than it was?

A. Well, I thought it was dissolved pretty promptly as it was—that's a big business—a \$3,-800,000 business and it had been operating under

(Testimony of C. J. Wescott.)

my name since 1926, and you couldn't slam that shut very good with a bang. No one knows what's coming in. We don't know what the Internal Revenue people are going to do. We have two states, we have the gas tax, we might make a mistake in that, and since we have dissolved we have had to go out to the directors and get their signatures on the mortgage, and one thing and another.

Q. Whom did you consult with as to when you could or should dissolve the corporation?

A. I think it was Mr. Breshears.

Q. Was the dissolution of the corporation delayed for a tax benefit to Mr. Frank Mattison?

A. There was no angle in that as far as I am concerned now.

Q. Was Mr. Mattison's personal tax picture ever discussed between the directors?      A. No.

Q. Was it ever discussed between you and [50] Mr. Mattison, the tax picture and how it might be affected by the dissolution of the corporation?

A. I can't recall any. What I am trying to say is that regardless of any tax angle that never would have been sold with my name on it before it was.

Q. Did Mr. Mattison ever ask you to delay dissolution that he might receive tax benefits?

A. Oh, no, no.

Q. Now, during the period of dissolution, that would be from March—from June 13, to May—from June 13, 1952, to May 13, 1953, did Mr. Mattison

(Testimony of C. J. Wescott.)

have authority to write any checks on the bank account of the corporation?

A. In the deposition I didn't think he had the right to sign a check, but I was mistaken, he could, but it had to be countersigned.

Q. Now, did any of the officers of the corporation—did any of the officers of the corporation have authority to sign a check, either singly, or by countersignature, for personal purposes?

A. Oh, no, no.

Q. For what purpose could anybody draw a check on the corporation bank account?

A. For business purposes.

Q. You have a voucher system?

A. Yes. [51]

Q. And each check has to be supported by a voucher, is that right?

A. That's right, each voucher is connected with a check. I couldn't draw any money out of there—and I was President.

Q. Now, sir, when you sold your stock to Mr. Mattison, was there any side agreement, other than evidenced by your option agreement concerning this stock?      A. No.

Q. That he would give you back some of the money?      A. Oh, no, no,

Q. Or that you would assume any of the obligations of the corporation?      A. No, no.

Q. Was there an agreement as to what would happen if Mr. Mattison got stuck with a big tax liability?      A. Never discussed.

(Testimony of C. J. Wescott.)

Q. Was there any agreement made as to what would happen if Mr. Mattison made an unusual amount of money out of this? A. No, sir.

Q. There were no pieces of paper and no agreements other than——

A. No, nothing subtle about it at all. [52]

Q. Have you received any funds from Mr. Mattison? A. Anything?

Q. Any funds, sir?

A. Any than what the record shows?

Q. Yes, sir. A. No, not a penny.

Mr. Patten: You may inquire.

The Court: Before you start the cross-examination, I notice the gentleman from the bank is here. Would you like to put him on so that he can get back?

Mr. Foye: I think in view of our stipulation, your Honor, we don't need the gentleman from the bank anymore.

Mr. Patten: May I withdraw the originals and substitute the carbon copies so that I may return these to the bank?

The Court: Is there any objection to that?

Mr. Foye: No, your Honor.

The Court: Very well.

The Clerk: W, X and Y.

#### Cross-Examination

By Mr. Foye:

Q. Mr. Wescott, can you hear me?

A. No, stand up here closer, boy, my ears are not good. [53]



(Testimony of C. J. Wescott.)

Q. Now, prior to 1945 Continental Oil Company was in control of Wescott Oil Company, was it not?

A. Yes.

Q. And they sold out their holdings in Wescott Oil Company because they wanted to retain their investments closer to their pipeline back east?

A. That was their story to me.

Q. Then, in 1951, they approached you to try and buy the Wescott Oil Company again, didn't they?

A. That is true.

Q. Now, I think you testified that the reason they wanted to come back into the territory in 1951 was because they were going to attempt to build a pipeline out in this part of the country, is that right?

A. That is their story to me.

Q. Yes, sir. Now, your meetings in 1951, you discussed the problems of exchanging the Wescott Oil Company stock for Continental Oil Company stock at a net to you of approximately \$500 per share?

A. That's true.

Q. Did Mr. Mattison attend any of these meetings that you held with Continental Oil Company in 1951?

A. Yes, I don't know whether one or two.

Q. He did attend one in 1951?

A. You mean when we were talking about selling the [54] stock?

Q. When you were discussing the exchange of stock for stock, had—did he attend some of those meetings?

A. Yes.

Q. He did.

(Testimony of C. J. Wescott.)

A. We had, I don't know how many meetings, one or two.

Q. He attended at least one or two?

A. Yes.

Q. Now, did you ask him to attend those meetings, Mr. Wescott?      A. Yes.

Q. What purpose did you have in mind in asking him to attend these meetings?

A. He was to supply the figures, and I wanted him to check their figures.

Q. I see. This was when you were talking of the exchange of stock for stock?

A. Well, yes. The periods are pretty close together. They turned down the stock exchange. It was right after that that we started to talk about a cash proposition.

Q. But Mr. Mattison was at some of the meetings that you held when you talked about a stock exchange?      A. I don't think so. [55]

Q. Oh, he was not?

A. Not on the stock—now, I'm not sure. The reason I wanted him on the cash—I wanted him to check on their figures, if the cash figures were right.

Q. You don't remember for sure whether he was at the meetings when you were talking about the exchange of stock for stock?

A. It don't run in my mind that he was. I don't know. That was a long while ago.

Q. You are not quite sure?

Q. No. I was not sure of the time of year there

(Testimony of C. J. Wescott.)

in the deposition. They are so close together, Mr. Foye, I don't know what I'd want him for on the exchange of stock.

Q. It was not necessary for you to have the financial advice about what you were getting in that exchange of stock for stock?

A. We had gone through that at Lentz meeting here before, in '51.

Q. Was that with Mr. Mattison? A. No.

Q. You did not talk to Mr. Mattison about that?

A. No, no, he wasn't around at those.

Q. Now, those negotiations of exchanging stock for stock broke down, I understand it, because Continental stock [56] went up in price?

A. Yes. They tried to hold me to the original deal. In the meantime their stock had appreciated somewhat. It would have been very unfair, I thought.

Q. Then, I think you testified, in 1952 representatives of Continental approached you again?

A. Yes, they called me up.

Q. That was early in 1952?

A. I think it was—I think March.

Q. Could it have been before March, Mr. Wescott? A. What?

Q. Could it have been before March?

A. I believe in March, the neighborhood of March. It was early in the year.

Q. I see. I suppose at that time you had several meetings with them? A. Yes.

Q. Now, when Continental approached you in

(Testimony of C. J. Wescott.)

1952, their proposition then was to purchase the stock of Wescott Oil Company for cash, is that right?

A. No, we still went through—I thought—we still went through the exchange again.

Q. Yes.

A. If you know how fellows bargain, one meeting don't settle any question. [57]

Q. Yes, sir.

A. You have to have a dozen meetings with those fellows to get those fellows to say, "Yes."

Q. After you decided, in the '51 meetings that you were not going to exchange stock for stock, they then offered to buy your stock for cash, did they not?

A. No, sir.

Q. They didn't?

A. No, they'd have gotten it.

Q. Did you ever discuss it, selling your stock to them for cash?

A. Yes, and we built that figure up, and all of the time I thought that was the figure that they were going to purchase the stock.

Q. Why didn't they?

A. My proposition to them was the same to them as to Mr. Mattison, make me hold at \$500, and we built this up and that is what I wanted Frank for was to check on the figures and see just what we were doing, and when we got to the point they refused the stock.

Q. Well, all the time you were talking with

(Testimony of C. J. Wescott.)

representatives of Continental about what price they would pay you for the stock?

A. That is true.

Q. Yes, and you brought Mr. Mattison in there to [58] advise you about that?

A. As to the figures, yes. If they said \$1,000 I couldn't have figured the taxes. I don't know anything about tax matters to be honest with you.

Q. Mr. Mattison advised you that \$607 was a good price on the stock?

A. I didn't ask his advice on the sale. I asked whether those figures were correct.

Q. Whose figures were those?

A. Continental, and I had been figuring it out in order to make hold at \$500. I think we agreed at 607, I'm not positive.

Q. How did you arrive at that price, sir?

A. Well, they did most of the figuring. They told me that would do it.

Q. They figured that is what your assets were worth?

A. No, the assets had nothing to do with it.

Q. Nothing to do with it, sir?

A. No, we were not talking about assets, we were talking of making me hold at \$500. We never talked about assets.

Q. Would you say it is not true that the price of the stock you are talking about had no relation to the assets of the company? [59]

A. No, I can't say that. Now, as a matter of fact, when we talked about the exchange of the stock at

(Testimony of C. J. Wescott.)

\$500 into Continental, they sent a man by the name of Bob Hurd out here, and I think we spent five or six days, I did with him, showing him our property so he could get an idea, I imagine, of what is behind that stock.

Q. So the price that you were talking about with Continental——

A. Now, allow me to interrupt, Mr. Foye. At that time he was keeping a running account of what the stock was. I have never seen that yet, I would like——

Q. Who was doing that, sir?

A. Bob Hurd, of the Continental. I would like to see just what they thought it was worth. They have never seen fit to let me see that.

Q. But the price that you were talking about with them was based on the assets of the corporation, was it not?

A. No, the stock. We were selling stock.

Q. What was behind the value of the stock, Mr. Wescott?

A. Well, now, you asked the question, it's a fair one. Assets.

Q. Did the price you are talking about for the sale of the stock have any relation to the assets of the Wescott Oil Company? [60]

A. Why, certainly, it had to. They wouldn't buy the stock of an empty corporation.

Q. Sure. Would you say it was based on the assets of the company?

(Testimony of C. J. Wescott.)

A. Yes. If I was buying the stock it would be based on that.

Q. Yes, sir. Mr. Mattison didn't tell you one way or the other whether that was a good price, did he?

A. No, I didn't ask his advice on the sale. The only advice I wanted from Mr. Mattison was the accounting.

Q. And the figures that Continental were going over and you wanted Mr. Mattison to check on, they related to the value of your assets, didn't they, sir?

A. They what?

Q. They related to the value of your assets?

A. They had made an examination of our assets when we first started out, and evidently they thought \$500 was a fair price.

Q. And you wanted Mr. Mattison to check to see that their inventory and valuation of your assets was——

A. No, I wanted him to check the figures to see whether, for instance, \$600 or \$607 is making me hold.

Q. I see. In your talks with the representatives of Continental Oil Company, did you tell them, or did you discuss with them, generally, that they should pay you [61] about \$607 for your stock?

A. No, the discussion was making me hold at \$500, and their accountant was doing the figuring and I thought I ought to have one to figure a little on my side.

Q. You were talking about a price that would make you hold at \$500, were you not?

(Testimony of C. J. Wescott.)

A. Pardon me.

Q. I say you were talking about a price that would make you hold at \$500?

A. That is true.

Q. And that price was about \$607, was it not?

A. I think so, I think that was it.

Q. And that is the price you talked about with the representatives of Continental?

A. Yes, when Mr. Mattison was there, yes.

Q. Yes, and that is the price you talked about that they would pay you for the stock?

A. Yes.

Q. When did they tell you they were not going to buy stock, Mr. Wescott?

A. Well, as I recall, it was in the morning, and I was a sick man and I told them I had to get some rest. I went up to the hotel.

Q. Which hotel was that, sir?

A. The Cosmopolitan. [62]

Q. Oh, this was in Denver, was it, sir?

A. This was in Denver. And I came back at three or four and they said they didn't want to buy the stock.

Q. And that was after you had talked about the price that they were going to pay you?

A. That's right.

Q. Did they tell you why they didn't want to buy the stock?      A. No, they didn't.

Q. They just told you they were not going to buy the stock?      A. That's right.

Q. That is all they said?      A. That's right.



(Testimony of C. J. Wescott.)

Q. After all these negotiations about the——

A. Now, wait, I ought to be exact on this—they might have said they would rather have the assets, now they might have said the—one—I don't know.

Q. Did you get the idea that they wanted to buy the assets?

A. That was—yes, sir. I couldn't help but get it.

Q. Sure. And did you get the idea that is why they didn't want to buy the stock?

A. No, I didn't get anything. I——

Q. You don't know why they didn't want to buy the [63] stock?

A. Now, here, boy, you are asking me to read their minds, and that is a pretty hard thing. I don't think they know what they are doing.

Q. Mr. Wescott, over how long a period do you think these negotiations went on that you had with them in 1952?

A. How many meetings?

Q. Over how long a period of time?

A. I think June of '51, when I negotiated with them the first time.

Q. You might have negotiated with them, not in 1952 when you started talking about their buying your stock for cash?      A. Yes.

Q. How long a period of time did those meetings go on, a month or two?

A. Oh, no.

Q. Not that long?      A. No, no.

Q. Two or three weeks?

A. Well, until we arrived at that point I would

(Testimony of C. J. Wescott.)

say, "Yes." They were not continuous meetings, you know.

Q. Of course not.

The Court: Mr. Foye, we will take the noon [64] recess until 2:00 o'clock this afternoon.

The Witness: It's hard for me to remember these things, Mr. Foye, I just can't do it, I can't.

(The Court recessed at 12:00 o'clock, noon.)

September 10, 1957—2:00 P.M.

The Court: You may resume the stand, Mr. Wescott.

Cross-Examination

(Continued)

By Mr. Foye:

Q. Now, Mr. Wescott, to go back just a minute, your negotiations in 1952 with the Continental Oil Company broke up because they refused to buy the stock of the Westcott Oil Company, is that right?

The Witness: That's right.

Q. And you knew then that the reason they refused to buy that stock was because they wanted someone to liquidate the corporation?

A. I'm quite certain of that.

Q. Yes, sir. They wanted just to buy the assets?

A. They what?

Q. They wanted just to buy the assets?

A. Yes, sir. That's what—I——

Q. Now, your tax attorney had advised you not

(Testimony of C. J. Wescott.)

to sell the assets of the corporation, is that right, sir? [65]

A. Well, I knew better than that anyway, without asking that question.

Q. You knew better than liquidate the corporation and sell the assets yourself?

A. No. You asked about the company selling its assets.

Q. You knew better than to sell the assets of the company? A. Yes.

Q. Did you know better than to liquidate the corporation than sell the assets? A. No.

Q. Had your tax attorney advised you not to do that? A. Yes, sir.

Q. He advised you not to do that, is that correct? A. Yes.

Q. After those negotiations blew up, you were then looking around for somebody to liquidate the corporation, were you not, sir?

A. Well, I would have been glad—no, I didn't look. I would have been glad if someone would have come and said, "I want to buy your stock," all of it.

Q. You knew it would be hard to sell the stock to anybody except a big company, didn't you, [66] sir? A. That is true

Q. Yes.

A. They are the only customers.

Q. And it was your experience that nobody was going to buy it unless they were going to liquidate it, wasn't that true? A. No, that wasn't true.

(Testimony of C. J. Wescott.)

Q. You had an opportunity to sell that stock without liquidating the corporation, sir?

A. No. You—I misunderstood your question. I thought you asked me if there was no chance of selling that stock without liquidation.

Q. Not to a big company?

A. Yes, to a big company, they had been buying their stock.

Q. You couldn't sell your stock that way?

A. Well, I found I couldn't.

Q. Yes, sir, so you were looking for someone to liquidate the company?

A. Well, I wouldn't put it that way. I would have been glad if someone came to me, which he did.

Q. Yes. You knew that he was going to liquidate the company, didn't you?

A. Oh, yes, yes indeed.

Q. Now, prior to the time you sold your stock to [67] Mr. Mattison, do you recall the time you and Mr. Mattison went to the office of Mr. Fred Costello, here in Boise?

A. I remember. I thought I was only in his office once and that was alone. I don't have a recollection of going there with him.

Q. You don't have a recollection of going there with Mr. Mattison and showing to Mr. Costello this plan? A. I never had a plan.

Q. No, sir, I didn't—let me put it this way, do you recall any time that you went to the office of Mr. Fred Costello with Mr. Mattison at which time

(Testimony of C. J. Wescott.)

Mr. Mattison presented to Mr. Costello a written plan for the carrying out of this transaction?

A. No, I don't. I may have now—that's a long while ago.

Q. You just don't recall whether you did or whether you didn't?      A. How?

Q. You don't recall whether you did or whether you didn't?

A. No. I only recall being there once.

Q. Would you say you did not go with Mr. Mattison at that time?

A. No, I won't say that, I don't know.

Q. You may have? [68]      A. Could be.

Q. O.K.

A. But I don't know why I would.

Q. Mr. Wescott, can you tell me, please, whether Continental paid to Mr. Mattison approximately the same price that they would have paid you, total?

A. I don't know what they would have paid me, I have no knowledge.

Q. Well——

A. I have no knowledge of that.

Q. May I finish the question?      A. Yes.

Q. Do you know whether Continental paid Mr. Mattison, for the assets of the corporation, substantially the same total price they would have paid you had they bought your stock for the price for which you were negotiating?

A. They paid him more than the stock, I think.

Q. A little more than the price?      A. Yes.

Q. Thank you. And you knew at the time Mr.

(Testimony of C. J. Wescott.)

Mattison came to you with the plan that he didn't have enough money—

A. He didn't come to me with his plan.

Q. —to buy the stock? [69]

A. He didn't come to me.

Q. Oh, he didn't come to you? A. No.

Q. How did you find out about it?

A. Because he went and he made a deal with Continental.

Q. That was before he came to you?

A. No, he came to me, I didn't know what his plan was of liquidation was. He came to me and he said, "Why can't I buy this and liquidate?"

Q. Yes. You know he was going to liquidate though, didn't you? A. That's true.

Q. And you knew he was going to sell the assets to Continental?

A. Oh, yes, I knew that. I had to know that.

Q. Yes. Now, did you know whether or not he had enough money to do this on his own?

A. I knew he didn't have enough.

Q. You knew he didn't have enough?

A. That's right.

Q. Do you recall, sir, the resolution of the Board of Directors of the Wescott Oil Company of June 13, 1952, authorizing the liquidation and dissolution of the corporation? Do you recall that? [70]

A. If it's in the record, why that's me. I had to be there. I don't know, I can't recall all that.

Q. Do you recall that the directors, in 1952,

(Testimony of C. J. Wescott.)

sometime, authorized the corporation to be liquidated and dissolved?

A. Well, I'd like to see that resolution. If it is there, that's what it was.

Q. I hand you sir, Exhibit J in Evidence, here, and show you a page titled "Record of Proceedings, Minutes of Special Meeting of Board of Directors of Wescott Oil Company," and ask you, sir, if that refreshes your recollection about the resolution authorizing the liquidation and dissolution of the corporation? Mr. Wescott, I think it will be right here. (Indicating.)

A. (Examining the Exhibit): Yes, that is right.

Q. You recall that event? A. Yes.

Q. And you were a director at that time, sir?

A. Yes.

Q. Now, do you recall whether or not you would have signed that resolution in the normal course of things? A. Would I what?

Q. Do you recall whether or not you would have signed that resolution in the normal course of events? A. Yes, I think so. [71]

Q. As a director? A. Yes.

Q. Now, was it your intention, Mr. Wescott, in signing that resolution to completely liquidate and dissolve the corporation? A. Oh, yes.

Q. You didn't intend to ever carry on any other business with that corporation? A. No, sir.

Q. Do you know whether or not the other directors intended the same thing?

A. Well, you will have to ask them, they are the best evidence.

(Testimony of C. J. Wescott.)

Q. You don't know.           A. No.

Q. Now, isn't it true that Mr. Mattison took you to some of the meetings that he had with Continental Oil Company?           A. Yes.

Q. How many, do you recall, sir?

A. Well, the only one I can recall is one.

Q. Do you know why he took you then?

A. Yes.

Q. Why?

A. I think they wanted me there, too, because I had [72] a knowledge of the company and the assets.

Q. Now, Mr. Wescott, you helped Mr. Mattison get options on—to purchase some of the stock, did you not, sir?           A. No, I didn't.

Q. You did not?

A. No, sir. Yes. Wait a minute. I had some stock that was in my name and I think I then had some that I had under my direction holding power. Yes, they asked me, naturally, I didn't go to them.

Q. You didn't go to the individual stockholders?

A. No, I'm sure I didn't.

Q. You didn't go to any of them?

A. Well, I can't recall—yes, I went to Mr. Driscoll.

Q. Mr. Driscoll?           A. Yes.

Q. Did you go to any more, sir?

A. How?

Q. Did you go to any of the other stockholders?

A. Not to my recollection—I'm not sure.

Q. Are you sure you didn't go to any of them?

A. No, I'm not sure. That's six years ago.



(Testimony of C. J. Wescott.)

Q. Except Mr. Driscoll?

A. No, I'm not sure.

Q. You might have? [73]

A. I might have, I don't think I did. I might have.

Q. For what purpose did you go to Mr. Driscoll?

A. I went to Mr. Driscoll first on the \$500 exchange, then I told him about this, and that was still good, I think—I'm not sure that I talked to him even about this because we had so many conversations and we were trying to get \$500.

Q. Now, I am asking you, Mr. Wescott, whether or not you went to any of the individual stockholders in the Wescott Oil Company for the purpose of helping or securing an option to purchase their stock? A. I don't think I did.

Q. You don't think you did?

A. No, he went around himself and picked these up.

Q. As far as you know, did he go to all of the stockholders?

A. All of them with the exception—no, I think he went to them all.

Q. No exceptions?

A. I don't know of any exceptions. I think he went to them all. Are you asking me if I went with him on the escrow deal?

Q. No, the option to purchase the stock to which the escrow agreement was attached.

A. I don't think I did, now. I don't know. Thats [74] too long ago.

(Testimony of C. J. Wescott.)

Q. You think you might have gone to some of them, sir?

A. I won't say that. I think I didn't.

Q. You don't think you did?

A. I don't think I did.

Mr. Foye: That is all.

### Redirect Examination

By Mr. Patten:

Q. Would you have sold your stock to anyone who would have paid you the price you were asking?

A. Yes, to Mr. Foye, or anybody.

Q. And how was that price arrived at, sir, the price you were asking?

A. Five-hundred dollars, net, ex taxes.

Q. And how did you arrive at the price of \$500? What factors did you take into consideration?

A. Well, that was more or less pulled out of the air at the time we were trading stock. But, of course, in order to arrive at that I looked at our Balance Sheet to see just where we drifted, and our earnings statement.

Q. And your earning statement?

A. Our earnings, yes. It's pretty hard to tell the different factors that enter into determining what you want for a stock. [75]

Q. That is what you wanted, in other words?

A. That is what I wanted.

Mr. Patten: That is all, thank you.

(Testimony of C. J. Wescott.)

Recross-Examination

By Mr. Foye:

Q. You knew that your stock was only worth as much as the assets of the corporation were, Mr. Wescott?

A. It runs in my mind that the book value at that time was worth \$380.

Q. And that is based on the assets, wasn't it, sir?

A. Any stock is based on assets and earning power.

Mr. Foye: That is all.

The Court: Mr. Wescott, may I ask you, wasn't there a factor of good will in the price of that stock, also, as a going company, more than just the physical assets? A. Well, I think we——

The Court: In other words, what I was asking you, Mr. Wescott, your stock was actually worth more to you than the actual physical assets?

A. Yes, Judge, that is true, but on the other hand, it was worth more to the majors than it was to me.

The Court: Yes.

Mr. Foye: Thank you, Mr. Wescott. [76]

(Witness left the stand.)

Mr. Patten: May Mr. Wescott be excused?

Mr. Foye: I have no objection.

The Court: Mr. Wescott may be excused.

Mr. Patten: Mr. Mattison, please.

## FRANK N. MATTISON

called as a witness on his own behalf, being first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: Frank N. Mattison.

The Clerk: Just have the witness chair.

## Direct Examination

By Mr. Patten:

Q. Where do you live, Mr. Mattison?

A. 2002 North 21st Street, Boise, Idaho.

Q. Is Ida G. Mattison your wife? A. Yes.

Q. And you and your wife are the plaintiffs in this action? A. That is right.

Q. How long have you lived in Idaho, sir?

A. It will be 50 years on February 7, 1958.

Q. What is your occupation, sir?

A. I am Treasurer of the Wescott Oil Corporation. [77]

Q. And is that a subsidiary of Continental Oil Company? A. That is right.

Q. Have you ever engaged in the business of buying and selling stock? A. No, sir.

Q. Have you ever engaged in the business of buying and selling of oil properties?

A. No, sir.

Q. This proceeding involves the Wescott Oil Company, when did you first become connected with the Wescott Oil Company, sir?

A. In May, 1923.

(Testimony of Frank N. Mattison.)

Q. And what was that connection, sir, in May, 1923?      A. I became Office Manager.

Q. And how long were you Office Manager of the Wescott Oil Company?

A. Until January, 1929.

Q. At the time you became associated with the Wescott Oil Company, in 1923, what was its name then?      A. The Allen Oil Company.

Q. And when did its name change, sir?

A. In 1926. The name was changed to Wescott-Allen Oil Company. In 1933 it was changed to the Wescott Oil Company. [78]

Q. And when you discontinued your job as Office Manager, what position did you acquire in the Wescott Oil Company?

A. Secretary and Treasurer.

Q. And how long did you hold your position as Secretary and Treasurer of the Wescott Oil Company?      A. Until early in June, 1952.

Q. And you resigned at that time?

A. That is right.

Q. How long have you known Mr. C. J. Wescott?

A. Very closely since 1926, prior by name.

Q. How long have you filed Income Tax Returns, sir?

A. My personal return was first filed in 1920.

Q. And since 1920, have you filed returns every year?

A. After 1920, at that time I was single, and

(Testimony of Frank N. Mattison.)

getting married in 1922, it was a few years that I didn't have to sign—to file.

Q. Where were all of the returns which you have filed filed, sir? A. In Boise.

Q. Now, were those returns filed on what is known as a cash or accrual basis?

A. Cash basis, always.

Q. Have you ever filed on an individual basis, on [79] any other basis than a cash basis?

A. No, sir.

Q. When did you first acquire a stock interest in the Wescott Oil Company? A. 1945.

Q. And how many shares did you acquire, sir?

A. Twenty-five.

Q. And from whom did you purchase these shares?

A. The shares were held in Trusteeship by Mr. Wescott, who originally got them for his sister, Miss Wescott, and they agreed to sell me 25 of her 77 shares.

Q. And how much did you pay for these shares, sir? A. \$193.65 a share.

Q. Prior to 1945, do you know who controlled the Wescott Oil Company, or the Wescott-Allen Oil Company, or the Allen Oil Company?

A. Up until 1926 the Continental Oil Company controlled the Allen Oil Company, 100 per cent. From '26 to 1945 their control was approximately 80 per cent.

Q. And from 1945 until the final dissolution, who controlled the Wescott Oil Company?

(Testimony of Frank N. Mattison.)

A. Mr. C. J. Wescott.

Q. When did it come to your attention, sir, that Mr. Wescott and some of the other stockholders of the Wescott Oil Company were interested in selling their shares? [80]

A. When Mr. Wescott became ill, and one other stockholder was needing money pretty badly and wanted to sell his stock, approximately—at least in '51—maybe '50.

Q. Do you know of any reason that the stockholders were anxious to sell their shares at this time?

A. Due to Mr. Wescott's illness.

Q. What did Mr. Wescott's illness have to do with the value of the stock?

A. The entire Wescott Oil Company was built around Mr. Wescott.

Q. Was there any other reason, sir?

A. None that I know of.

Q. You know of no other reason why the stockholders might be interested in selling their shares?

A. Well, after Mr. Wescott became ill and when it became apparent that it would be necessary for us to borrow considerable money to rebuild and revamp the service stations and bring them up to date, I don't believe that any of them cared to put any more money in the company than what they had already put in.

Q. Do you recall when it first came to your attention that Mr. Wescott was engaged in the negotiations for the sale of the stock?

(Testimony of Frank N. Mattison.)

A. Approximately the summer of 1951.

Q. You were familiar with the negotiations for the [81] sale of the stock? A. Some of them.

Q. You heard Mr. Wescott testify, did you not?

A. Yes, sir.

Q. Did you go with him down to the Sinclair Oil Company to negotiate? A. No, sir.

Q. Did you go with him to see Phillips Oil Company? A. No, sir.

Q. Did you go with him to the broker in Denver? A. No, sir.

Q. Did you go with him to—where is the office of Continental?

A. They have one office in Denver.

Q. Did you go with him to Denver to see Continental in connection with the sale of the stock?

A. I believe one trip.

Q. One trip to Denver? A. That's right.

Q. And what did you do at this conference?

A. I simply provided Mr. Wescott with figures on the first trip that I made to Denver. The second trip was on my own that I made to Denver, that was mine.

Q. We are referring now to the trip with Mr. Wescott, what type of figures did you furnish [82] him?

A. The ordinary figures from our—Balance Sheet, Ledgers—

Q. Profit and Loss? A. That is right.

Q. At that conference did you—when you accompanied Mr. Wescott to visit with the officers



(Testimony of Frank N. Mattison.)

of the Continental Oil Company, did you or Mr. Wescott discuss with them the possible sale of assets?      A. No, sir.

Q. At the time you and Mr. Wescott discussed this with Continental, did you ever discuss a sale of assets by the corporation?      A. No, sir.

Q. When was the first time you discussed with Mr. Wescott your purchase of his shares?

A. I believe that would be sometime in April of '52.

Q. Now, what price—first, did you approach Mr. Wescott, or did he approach you?

A. I approached Mr. Wescott.

Q. And what price did you offer to buy these shares at?

A. A price that would net him \$500 after the Federal Income Tax.

Q. Was that the same price that Mr. Wescott had demanded from Continental at the time when you were present? [83]

A. That might have been a few dollars difference.

Mr. Patten: I ask that this plain piece of paper be marked Defendant's Exhibit, next in order.

The Clerk: That is Exhibit Z.

Q. (By Mr. Patten): Handing you a plain piece of paper, Mr. Mattison—do you have a pencil—would you show us how the price of this stock was arrived at, sir?

Mr. Foye: I would like, before this goes on to have you specify which price you are talking about.

(Testimony of Frank N. Mattison.)

Q. (By Mr. Patten): The price that you and Mr. Wescott discussed, the price at which you offered to buy Mr. Wescott's shares.

The Witness: Mr. Wescott had two classes of shares.

Q. Well, let's take first the more recently acquired shares.

A. That is the same offer as the other stockholders.

Q. Yes. Would you tell us how that price was arrived at?

Mr. Foye: You are talking about the price that he paid to Mr. Wescott?

Mr. Patten; Yes, and the other stockholders.

The Witness: Figuring on the basis of the price that I had worked on, \$607.63—— [84]

Q. (By Mr. Patten): How did you arrive at the price?

A. By deducting the cost of their stock, 193-65, leaving them a gross profit of \$413.98, with the tax presumed that they would have to pay on the capital gain of 26 per cent, at that time, and the tax would amount to \$107.63. By deducting that \$107.63 from the tax, from the amount that I offered for the stock would leave a net of \$500.

Q. Would it work out the same way if you took \$500 and added the tax on top of it, would you make that computation also?

A. The net figure of \$500, add the tax of \$107.63, still makes \$607.63.

(Testimony of Frank N. Mattison.)

Mr. Patten: I would like to offer Exhibit Z in evidence.

Mr. Foye: May I ask him a few questions?

The Court: Yes, you may.

Voir Dire Examination

By Mr. Foye:

Q. Mr. Mattison, this is primarily for my own enlightenment. The tax on \$500 profit would not necessarily be \$107.63, would it?

The Witness: There was no profit of \$500.

Mr. Foye: I have no objection. [85]

The Court: Exhibit Z may be admitted.

(The document referred to was marked Plaintiff's Exhibit Z and was received in evidence.)

Direct Examination

(Continued)

By Mr. Patten:

Q. For further explanation, sir, this first figure is the sale price, is it not?

The Witness: \$607.63 is the sale price.

Q. And that is the cost price of these shares, is it not, 1-9-3-6-5?      A. That's right.

Q. And that is the profit, is it not?

A. That is right.

Q. And the 26 percent is using that alternate computation, is it not?

A. That is the long term computation.

(Testimony of Frank N. Mattison.)

Q. Yes, sir, and that figures out to \$107.63 tax, does it?      A. Right.

Q. And if we take \$500 and add 1-0-7-6-3 we come out to 6-0-7-6-3, is that correct?

A. That is right.

Q. And that is the price you offered Mr. Wescott?

A. Yes, and the other stockholders.

Q. And the other stockholders. Now, had [86] you previously made a computation for Mr. Wescott's benefit along this same line, did you make that computation first at the time you first negotiated with Mr. Wescott, or did you make it for his benefit when you were negotiating with the other oil companies?

A. Well, I made it for his benefit.

Q. Prior to the time you approached him?

A. That is right.

Q. You knew that is the price he was asking for the stock?      A. Correct.

Q. Now, all of the stock that you bought from Mr. Wescott, did you pay that same price for all of the stock?      A. No, I did not.

Q. For what stock did you pay a different price for?

A. Stock that he held since 1926, I think it was 607 shares.

Q. And why did you offer to pay Mr. Wescott—let me withdraw the question. Did you pay Mr. Wescott more or less for the shares that he had acquired in 1926?      A. I paid him more.

(Testimony of Frank N. Mattison.)

Q. How much more, sir?

A. I believe the price that he got for the 607 shares was 6-61-50. That is on the record someplace there [87] and I believe it to be correct. It would have to be in the Escrow Agreement.

Mr. Patten: I think that will be Exhibit X.

Q. (By Mr. Patten): Handing you Exhibit X, which shows 6-61-50, is that the price?

A. That is correct.

Q. And why was Mr. Wescott to receive the higher price for those shares?

A. Well, that stock was owned by him prior to 1945. The Continental secured 193-65 for their shares that they held at that time, so we figured—or I figured that Mr. Wescott should receive more money for these shares as actually they had increased in value from the time he originally had time until 1945 in the amount of \$93.65. Now, exactly how I arrived at that 6-61-50, off hand, I can't tell you.

Q. Would the fact that Mr. Wescott had to pay more tax on those shares have any bearing?

A. That had considerable bearing.

Q. Would also the fact that they were controlling shares have anything to do with it?

A. Well, as soon as I got them I wasn't worried about the control.

Q. Now, at the time you approached Mr. Wescott [88] with your offer to buy his shares, did you know that his negotiations with Continental Oil had reached an impasse?

A. Yes, I knew it.

Q. And about what was the date you said that

(Testimony of Frank N. Mattison.)

you approached Mr. Wescott with the idea of purchasing his shares?

A. Some time in April in '52.

Q. What did Mr. Wescott tell you when you asked him if he would be willing to sell his shares to you at the price that he mentioned?

A. He agreed to sell them.

Q. Did you get any written document at that time? A. Only verbal at that time.

Q. Now, what did you do next, sir?

A. I went to the Continental.

Q. And about what time did you approach the Continental Oil Company?

A. The latter part of April or early in May.

Q. 1952? A. That's right.

Q. Did you go to Denver, or did they come here?

A. They were here first.

Q. They were here first, and did you later go to Denver? A. I did. [89]

Q. And who went with you?

A. My attorney and Mr. Wescott.

Q. And who was the attorney?

A. Mr. Breshears.

Q. Now, how many trips did you make to Denver to see the Continental Oil Company?

A. On my own, one.

Q. On your own, one. And how long did it take you to reach an agreement with Continental Oil Company at that time, you were negotiating with them for a sale of assets at this point?

A. That is right.

(Testimony of Frank N. Mattison.)

Q. And how long did these negotiations continue for the sale of assets?

A. Well, we probably tore up two or three agreements before arriving at the one that satisfied both Continental and myself.

Q. And is this the agreement which had been previously admitted in evidence here, as Exhibit G, is this the agreement that you finally agreed upon?

(Presenting Exhibit G to the witness.)

A. (Examining the document): I was looking for my signature. That is it.

Q. And about how long had you been negotiating with Continental before this agreement was signed? [90]

A. At least two weeks.

Q. Two weeks. At all of your negotiations with the officials of the Continental Oil Company, was Mr. Wescott present, or for how many was he present would you say?

A. He was present at the one meeting that I am positive of.

Q. And the rest he was not present?

A. That is right.

Q. Was your attorney present at all of the meetings?

A. He was present at the principal meeting that consummated this last agreement.

Q. Now, with whom did you negotiate, what officials of the Continental Oil Company did you negotiate with?

(Testimony of Frank N. Mattison.)

A. Well, Mr. Lidell, the Vice-President; Mr. L. L. Aikens, his assistant; Mr. A. T. Smith, attorney for the Continental; Mr. Joe Lentz, Marketing Manager—I believe that is all.

Q. At the time you approached Mr. Wescott, did you have sufficient cash of your own to buy all of the stock of the Wescott Oil Company?

A. I did not.

Q. You intended to liquidate it from the gain, did you not, sir?      A. That is right. [91]

Q. When did you start approaching the other stockholders, sir?

A. Immediately after contacting Mr. Wescott on his.

Q. Was it before or after this agreement with the Continental Oil Company?      A. Before.

Q. Before. Were these informal contacts, or did you get written documents?

A. First verbal.

Q. First verbal?      A. Yes.

Q. Did you make any trips to see them?

A. Yes.

Q. Where did you go to?

A. Two stockholders in Twin Falls, and one in American Falls, Idaho.

Q. Did Mr. Wescott accompany you on these trips?      A. He did not.

Q. Did Mr. Wescott go to see you—help you in your negotiations with the stockholders?

A. He did not.



(Testimony of Frank N. Mattison.)

Q. Did you tell them—you told them that Mr. Wescott had agreed to sell his shares, did you not?

A. I did.

Q. Now, when did you start obtaining options from [92] the stockholders?

A. In April of '52.

Q. And are these the options, showing you Exhibit H, are these the options that you obtained from the stockholders?

A. (Examining the Exhibit): That is right.

Q. Did you obtain an option from all of the stockholders? A. I did.

Q. And what, if anything, is the next thing that you did? A. Exercised the options.

Q. Handing you Exhibit I, and I ask you if these are the letters you sent to the stockholders?

A. The first one is the original and the rest are copies. Those are the letters.

Q. And do you recall the date on which these letters were sent, sir?

A. I didn't date only the first one here, that was May 30, and I presume that the rest of them were within a day or two of that date.

Q. That is May, is it not, sir? A. May.

Q. Yes. What were the mechanical arrangements that were made, sir, for the payment of these shares that [93] you exercised your option to purchase? How were you to pay for these shares?

A. Well, they were placed in escrow in the First Security Bank.

(Testimony of Frank N. Mattison.)

Q. Was there anything unusual in the Escrow Agreement with the First Security Bank?

A. Nothing that I can recall.

Q. Phrasing it this way, sir, did the same shares which the shareholders placed in escrow remain in the Escrow Agreement throughout its term?

A. No, they surrendered their individual shares to the company.

Q. About when did that happen, sir?

A. I would say approximately the 10th of June, that probably is a matter of record.

Q. Handing you Exhibit M, would that help you in testifying, sir?

A. The individual certificates were surrendered to the company on June 11.

Q. And what certificate was issued then, sir?

A. The company then issued to Frank Mattison one certificate for 2,189 shares.

Q. Was that all of the outstanding stock of the company?      A. That is right. [94]

Q. And what was done with that certificate on June 11?

A. That was placed in the escrow until the stock, the previous stockholders were paid in full.

Q. Now, Mr. Mattison, were the physical assets of the Wescott Oil Company transferred to you?

A. They were.

Q. Do you recall the date on which they were transferred, sir?      A. June 16.

Q. And were those documents filed in the various counties where the Wescott Oil Company properties

(Testimony of Frank N. Mattison.)

were located?           A. They were.

Q. And the various taxes paid on the transfer?

A. Documentary taxes, yes, sir.

Q. And these are the—without examining in detail—were these the documents by which the title of these properties were transferred to you?

A. Whether they are all of them, I am not positive, there was a tremendous number.

Q. And who prepared the documents?

A. Mr. Breshears.

Q. Then, on the same day, or a day or two later, did you transfer these same assets to the Wescott Oil [95] Corporation?           A. Yes, sir.

Q. And these, in general, are the legal documents effecting that transfer?

A. That is right.

Q. Was this on the same day, or the next day?

A. That was an awful long day. I think it was probably the same day.

Mr. Foye: May it please the Court, I think the record speaks for itself on that, June 16.

Q. (By Mr. Patten): And were these documents, were they filed in the various counties, those that required to be filed?           A. They were.

Q. And the documentary stamps paid on those?

A. That would be the Wescott Oil Corporation, that is, I was not Secretary-Treasurer of that company at that time.

Q. Now, I notice a number of conveyances from you to the Wescott Oil Corporation are missing, do you know where they might be, sir?

(Testimony of Frank N. Mattison.)

A. They would belong to the Wescott Oil Corporation. All of the deeds and the abstracts are kept for the Wescott Oil Corporation by the Continental Oil Company.

Q. What amount did you receive, sir, from the Continental [96] Oil Company or the Wescott Oil Corporation for the sale of these assets?

A. Well, that is a matter of record, but it would be one million six hundred eighty some-odd-thousand dollars.

Q. What was the first amount you received?

A. \$1,400,000.

Q. Was that a check from the Continental Oil Company?

A. I can't recall for sure, but I'm fairly sure that it was from the Continental Oil Company.

Q. And what was done with that check, sir?

A. That was turned over to the First Security Bank.

Mr. Foye: I will object to that question and ask that the answer be stricken on the grounds that we have stipulated that Continental Oil Company paid to the First Security Bank \$1,400,000 on June 16, 1952.

The Court: He may answer.

Q. (By Mr. Patten): What was done with the check?

The Witness: Well, we tried to get a picture of it but it seems that the First Security Bank didn't photostat at that time, at least they couldn't find it.

(Testimony of Frank N. Mattison.)

Q. What is your memory of what was done with the check? [97]

A. I thought the check was made out to Frank Mattison and endorsed by me and turned over to the First Security Bank, but I couldn't swear to it.

Q. And what—how were the proceeds of the check applied, sir?

A. \$265,000 to the First Security Bank on a note due them.

Q. By whom?

A. Wescott Oil Company.

Q. And the remainder to the stockholders?

A. To the stockholders.

Q. Now, at a later date, did you receive any additional funds from the Wescott Oil Corporation for these assets?

A. I received a check.

Q. Handing you Plaintiff's Exhibit P, is this the check you received?

A. (Examining the document): That is the top of the check, and the amount is correct, it is \$289,-399.07.

Q. And what did you do with that check?

A. Deposited to my account at the First Security Bank.

Q. And what did you do with the proceeds of this check, sir, or the second check which you received?

A. Paid the balance on the note of \$45,000 and paid [98] a note that I owed to Mr. Wescott of two hundred and some-odd-thousand dollars.

Q. Was that note given for the purchase of some of Mr. Wescott's shares?

(Testimony of Frank N. Mattison.)

A. That is right.

Q. What did you do with the remaining funds, remaining from this check?

A. There was interest paid on the note to the bank, and escrow fees paid, and the balance was in my personal account and used to pay Income Taxes and various expenses.

Q. Referring to the year of 1952, what expenses, if any, did you incur in connection with this transaction?

A. Legal expenses and accountant's fees.

Q. Do you recall the amount of those expenses, sir?

A. The legal expense was \$2,500 plus some telephone calls—about eleven dollars and some odd cents, and I believe the accountant's fees were \$750.

Q. Handing you Exhibit A, and calling your attention on the page thereof, to the amount of \$3,629.19, is that the correct amount of your expenses in connection with this transaction?

A. (Examining the Exhibit): That is in '52, yes.

Q. How much did you pay for the shares which you purchased from the other stockholders, sir, in total? [99]

A. In total?

Q. Yes, sir.

A. Well, I'd have to look at the record to get the exact amount.

Q. What record would help you in that connection?

A. The Income Tax record would. (The docu-

(Testimony of Frank N. Mattison.)

ment referred to was presented to the witness for examination.) Were you asking the amount paid, just to the stockholders?

Q. Yes, sir.

A. I think there is another record there that is better than this one. This is the entire cost basis which includes considerably more.

Q. Do those records help you any, sir, or would the option agreements?

(Witness examining documents.)

The Court: While he is checking the records we will take the afternoon recess.

(A short recess was taken.)

Direct Examination

(Continued)

By Mr. Patten:

Q. Mr. Mattison, during the recess, have you ascertained the amount you paid for the stock of the Wescott Oil Company that you purchased in 1952?

The Witness: I had the figures here a minute ago.

(Exhibit presented to the witness.) [100]

A. \$1,347,480.57.

Q. Have you examined Exhibit A, sir?

A. I have.

Q. And what is Exhibit A, sir?

(Testimony of Frank N. Mattison.)

A. The Tax Return of Frank N. and Ida G. Mattison for the year 1952.

Q. Are all of the funds or profits which you received as the result of the litigation of the Wescott Oil Company during 1952 reported in that return?      A. They are.

Mr. Foye: That is objected to on the grounds that it assumes the determination of the instrument in favor of the taxpayer and so far as he asks whether the amount received are on the liquidation of the Wescott Oil Company.

The Court: Will you read the question back, please?

(The last question was read by the Reporter.)

The Court: That is referring to the 1952 return?

Mr. Patten: During 1952. May I rephrase the question?

Q. (By Mr. Patten): Are all the assets, or money which you received during 1952 as a consequence of the liquidation of the Wescott Oil Company reported in that return, during 1952?

The Witness: They are. [101]

Q. Did you receive, during the year 1952, any other funds—any funds or any property which is not reported in that return?      A. No, sir.

Q. Is the basis of your shares correctly reported in that return?

Mr. Foye: That assumes the question at issue, and I will object to the question on that basis.



(Testimony of Frank N. Mattison.)

The Court: I don't quite understand your question, Mr. Patten.

Q. (By Mr. Patten): Is the amount that you paid for the shares of the Wescott Oil Company correctly reported in that return?

A. They are.

Q. Are the expenses which you incurred in connection with this transaction correctly reported in that return?      A. They are.

Q. Now, in connection with this transaction, did you have occasion to consult with Mr. Costello?

A. Mr. Costello was employed—Costello and Miller was employed by me in the transaction involving the sale of the assets.

Q. And that is Mr. Costello, here?

(Indicating.)

A. That is right. [102]

Q. And when did you employ Mr. Costello?

A. In the latter part of April or early in May, 1952.

Q. And for what purpose did you employ Mr. Costello?      A. To assist me in tax matters.

Q. In whose tax matters?

A. My tax matters.

Q. Your personal tax matter, sir?

A. That is right.

Q. Specifically, what problem did you ask Mr. Costello about?

A. The principal problem was the question of whether the claim would be made that the com-

(Testimony of Frank N. Mattison.)

pany liquidated the assets instead of me, personally, thereby incurring a tax at the corporation level.

Q. About what would the amount of tax been involved if the Government made the claim?

A. Approximately \$257,000.

Q. And what would have happened in connection with the liquidation had the Government made such a claim?

A. Well, I'd probably be in the same condition as Joe Louis is today.

Q. You would owe a great amount of money?

A. That's right.

Q. Now, what did Mr. Costello tell you about the [103] tax position of the corporation?

A. I think I was convinced that it was safe, but he still contended that the Government might still attempt to claim that it was a liquidation by the corporation.

Q. Now, at any time did you consult with Mr. Costello concerning your own tax liability, how much money you were going to make out of this liquidation and how it would be taxed?

A. I did not.

Q. Did you ever discuss with Mr. Costello how much money you were going to make out of the result of the liquidation and whether it was long term or short term, and when it would be realized.

A. To the best of my knowledge, no.

Q. Did you ever consult with Mr. Costello the advantages of delaying when you would get this money?

A. I did not.

(Testimony of Frank N. Mattison.)

Q. Have you ever been a Director of the Wescott Oil Company?      A. I have not.

Q. Now, when did you resign as Secretary and Treasurer of the Wescott Oil Company?

A. I'm not positive of the date, exactly, but I think it was on June 12, 1952. [104]

Q. Why did you resign, sir, at that time?

A. I didn't believe that an officer of the corporation should conduct the liquidation insofar as selling the assets.

Q. Why didn't you believe that the officers of the corporation should conduct the negotiations?

Mr. Foye: I will object on the grounds that is not what he testified to. He said he didn't believe that an officer of the corporation should liquidate and sell the assets.

Q. (By Mr. Patten): Well, why didn't you believe that an officer of the corporation should sell the assets?

A. I was still afraid of the tax consequences.

Q. After you resigned as Secretary and Treasurer of the Wescott Oil Company, were you authorized to sign checks?

A. I still was, yes.

Q. And did you sign some checks?

A. I did.

Q. After the corporation begun its process of dissolution and winding up, could you draw checks on the corporation's bank account?

A. I could, with the signature of another.

Q. Could you, even with the signature of an-

(Testimony of Frank N. Mattison.)

other [105] person, draw on these funds for any purpose which you wished?      A. No, sir.

Q. For what purpose could you draw on these funds?      A. For paying bills, taxes.

Q. Prior to the time the funds in the bank account of the Wescott Oil Company were distributed to you, did you make any use of those funds for your personal benefit?      A. No, sir.

Q. Did you ever discuss with the Officers and the Directors of the Wescott Oil Company the timing of the dissolution, how long it would take?

A. I did not.

Q. Did you ever request the Officers and the Directors of the Wescott Oil Company to delay the dissolution?      A. I did not.

Q. Referring now to the year 1953, sir, what funds and property did you receive during 1953 as the result of the dissolution of the Wescott Oil Company?

A. I received the cash balance on hand, and the stock of the Lily Seed Company.

Q. Handing you Exhibit N, and referring to the last check there, is that the check which you received, sir?      A. That is correct.

Q. And what is the amount of that check?

A. \$101,585.76. [106]

Q. And when did you receive that check, sir?

A. On the 12th of May, 1953.

Q. And what did you do with the proceeds of that check, sir?

(Testimony of Frank N. Mattison.)

A. I deposited it to my account in the First Security Bank.

Q. And what have you used the proceeds of that check for, sir?

A. Income Tax purposes, and placed some of it in the savings account.

Q. Handing you Exhibit 3—Plaintiff's Exhibit No. 3 (Exhibit Q), and ask you if you know what that is?

A. That is the money I received in the sale of the Lily Seed Company stock.

Q. What is the amount, sir?           A. \$1,000.

Q. And to whom did you sell that stock, sir?

A. Mrs. Fred Lily .

Q. And when did you sell that stock, sir?

A. That was probably a few days prior to the date the check came through.

Q. What is the date of the check?

A. I presume it's the date of the deposit here, which is May 13, 1955.

Q. But you received the stock from the corporation [107] in 1953, did you not, sir?

A. Some time in '53, after May 12.

Q. Now, in addition to the Lily Seed stock and the check for \$101,585.76, did you receive any other funds during 1953 as a result of the liquidation of the Wescott Oil Company?

A. An insurance refund. I believe the amount was \$275.90.

Q. Handing you Plaintiff's Exhibit B, I ask you to identify Plaintiff's Exhibit B.

(Testimony of Frank N. Mattison.)

A. Frank N. and Ida G. Mattison Tax Return for 1953.

Q. Are all of the funds which you received during 1953 as a result of the final dissolution of the Wescott Oil Company reported in that return, sir?

A. To the best of my knowledge.

Q. Do you know of any other income that you received during 1953 that is not reported in that return?      A. I do not.

Q. During the year 1953, did you incur any expenses, sir, in connection with the dissolution of the Wescott Oil Company?      A. Very little.

Q. Is that—are those expenses correctly reported on the return? [108]      A. Yes, sir.

Q. What is the amount?      A. \$38.17.

Q. Now, at the time of the dissolution of the Wescott Oil Company—correction—on June 16, 1952, how many—approximately how many pieces of property did the Wescott Oil Company own?

A. Approximately 65.

Q. And on that property, what was located thereon?

A. Wholesale plants and service stations.

Q. Do you recall about the number of bulk plants that you had?

A. Twenty-four, with one in progress.

Q. How many filling stations did the company have?

A. Actually, company owned would be around 40, as near as I can remember without access to the records.

(Testimony of Frank N. Mattison.)

Q. And where were the properties located, sir?

A. From Ashton, in eastern Idaho, down through Idaho Falls, Blackfoot, Pocatello, American Falls, Rupert, Burley, Twin Falls, Buell, Wendell, Haley, Fairfield, Boise, Melba, Wilder, Marsing, Caldwell, McCall, Jordan Valley, Vail.

Q. Were they kind of in a "U" shape?

A. In a "U" shape, yes.

Q. About how many pieces of personal property did [109] Wescott Oil Company own?

A. Well, we loaned out considerable equipment to farmers and retail dealers over the State, that would be several thousand.

Q. How many bank accounts did the Wescott Oil Company have on June 16, 1952?

A. I'd say approximately 15. I'd still have to look at the record on that.

Q. How many Income Tax Returns did Wescott Oil Company file each year?

A. Three.

Q. What were the three?

A. State of Oregon, State of Idaho, and the Federal Income Tax.

Q. What other tax returns did the corporation file?

A. Gasoline Tax; Ton-Mile Tax, Idaho and Oregon; Social Security Tax; Withholding Tax; Unemployment—there may be a few more miscellaneous.

Q. Did you have any idea, sir, what the balance in the banks was on June 16, 1952?

A. According to the bank statements of the 16th

(Testimony of Frank N. Mattison.)

of June, we had approximately \$576,000.

Q. And that was—what happened to that money?

A. Some of it, of course, would be from checks outstanding, and the rest would be paid out in bills from [110] then on until the end of the year.

Mr. Patten: I ask these two checks be marked as Plaintiff's Exhibit, next in order.

The Clerk: That would be AA.

(The documents referred to were marked Plaintiff's Exhibit AA for identification.)

Q. (By Mr. Patten): Mr. Mattison, I am handing you two checks that have been marked for purposes of identification as Plaintiff's Exhibit AA, I wonder if you could tell us what those checks are, sir?

The Witness: The check of \$671.05 to Ray Brimhall Company, 758 West 14th North, Salt Lake City, Utah, was in payment of a disputed account that we didn't know we owed until we started working on it some time in December and finally compromised a bill for \$671.05.

Q. What is the next check, sir?

A. The next check is a payment by the Wescott Oil Company of \$2,500, dated December 31, 1952, to Ralph R. Breshears, Boise, Idaho.

Q. That is for Mr. Breshears' services to the company? A. That is right.

Q. I would like to offer—these are checks of the Wescott Oil Company, are they not? [111]

A. That is right.



(Testimony of Frank N. Mattison.)

Q. Do they bear your signature?

A. One is mine and one is Kramer, and one is mine and one is Wescott.

Mr. Patten: I would like to offer Plaintiff's AA in evidence.

Mr. Foye: No objection.

The Court: It may be admitted.

(The document referred to was marked Plaintiff's Exhibit AA and was received in evidence.)

Mr. Patten: May I see Exhibit N, please, sir?

Q. (By Mr. Patten): I am handing you Plaintiff's Exhibit N for the second time. Would you identify the other two checks in there, sir, what is the first check?

The Witness: The first check is dated March 12, 1953.

Q. What is the amount?                   A. \$23,822.44.

Q. And for what purpose?

A. To the Director of Internal Revenue, Federal Building, Boise, Idaho.

Q. For what purpose was that check issued, sir?

A. The Income Tax of the Wescott Oil Company for 1952. [112]

Q. And what is the next check, sir?

A. The next check is dated March 12, in the amount of \$2,595.78 to the State Income Tax Division, Boise, Idaho, for the State of Idaho Income Tax for the year 1952.

Q. Do you know when the returns to which

(Testimony of Frank N. Mattison.)

these checks were filed were prepared? Handing you Exhibits C and D, do you know when those returns were prepared?

A. Early in March, 1953. The next one would be early in May, 1953.

Mr. Patten: Exhibit M, please.

Q. (By Mr. Patten): Mr. Mattison, handing you Exhibit M, and calling your attention to Certificate Number 55, when was the notation placed on the back of that Certificate? Is there a notation on the back of the Certificate? A. There is.

Q. And when was the notation placed there, sir?

A. June 16.

Q. When did the Security First National Bank give you that Certificate, sir?

A. After the money was paid in in the escrow.

Q. And where was that Certificate kept until the time it was put in the book, there?

A. In my office.

Q. I see. And when was the word "cancelled" stamped on that Certificate?

A. Immediately after I received the final payment from the Wescott Oil Company.

Q. And when would that be, sir?

A. On the 12th day of May, 1953.

The Court: What was the date, '52, or '53?

Mr. Patten: '53, sir. Counsel tells me there might be some confusion about this.

Q. (By Mr. Patten): When was the notation put on there, what year?

(Testimony of Frank N. Mattison.)

The Witness: 1952.

Q. And when were the words "cancelled" put on there? A. 1953.

The Court: Did you say, Mr. Mattison, that you held that Certificate in your office from June, 1952, until May 12, 1953?

The Witness: That is right, sir.

Q. (By Mr. Patten): Now, Mr. Mattison, at the time you purchased the stock from the other stockholders of the Wescott Oil Company, did you have any side agreement with them that you would give them back any money from it, under any circumstances? A. I did not.

Q. Did you have any agreement with them that they [114] would reimburse you if the assets—if the liabilities of the company exceeded the remaining assets? A. I did not.

Q. Have you paid over or given any of the profit which you received on this liquidation to Mr. Wescott? A. No, sir?

Q. To Mr. Eberle, or any other of the stockholders? A. No, sir.

Q. Did you have any agreement in writing with anyone other than the documents which are in evidence here? A. No, sir.

Q. When were your returns—your individual returns for the year 1952 and 1953 audited by the Internal Revenue Service?

A. I can't give you that exact date.

Q. Can you remember approximately the year?

A. '54, as near as I can recall.

(Testimony of Frank N. Mattison.)

Q. Who made that audit, sir?

A. Mr. Charles Peterson, Jr.

Q. Did you agree to the adjustment which Mr. Peterson proposed?           A. I did not.

Q. Did you receive an assessment from the Internal Revenue Department?

A. Later on, yes. [115]

Q. And did you pay that assessment?

A. I did.

Q. And you instituted this suit to recover it?

A. That is right.

Q. Did you have any conferences with anyone in the Revenue Service, besides Mr. Peterson?

A. Later on, yes, we had a conference with what they call the next level, at which time I had retained Mr. Costello and Mr. Miller, and I believe Mr. Costello appeared at the first conference.

Q. And so you next, that was—when did Mr. Costello and Mr. Miller become interested in your personal tax affairs?

A. After the Revenue Agent had made an additional assessment.

Mr. Patten: You may inquire.

### Cross-Examination

By Mr. Foye:

Q. Mr. Mattison, one preliminary matter. May I see Exhibit Y—Exhibit Z. This computation that you made, Mr. Mattison, it is not quite as simple as that is it, especially the second way you did it?

The Witness: You mean the proof?

(Testimony of Frank N. Mattison.)

Q. The Computation, sir, determining the price. A. Very simple, to me. [116]

Q. Can you determine the price at which you have to sell the stock to recover all the Income Tax that you have to pay until you know what the Income Tax is?

A. Figuring on the basis of the capital gain, yes.

Q. But you—until you know the price you don't know what the tax is, do you, Mr. Mattison?

A. I know what the long term capital tax gain is.

Q. You know what the rate is? A. Yes.

Q. But you cannot apply that rate to the price until you determine the price, can you?

A. After anyone tells me what they have to have net, I can tell them the price they must receive to get that net figure.

Q. And even though one of the ultimates of the net is Income Tax which you can't determine until you know the price?

A. Only if the Income Tax is presumed to be the long term capital gain tax.

Q. Well, let me go back with you just a minute. You can't determine the amount of an Income Tax until you can apply a rate to a price, can you, sir? My point is, Mr. Mattison, that you have two unknowns in making that computation and it has to be made through an algebraic computation, does it not, sir? [117]

A. That is right.

(Testimony of Frank N. Mattison.)

Q. Did you make that algebraic computation yourself, sir?

A. No, I used the give and take.

Q. Who made that for you?

A. I made it myself.

Q. What method did you use?

A. Give and take.

Q. Pardon me.

A. The process of elimination, the give and take.

Q. I don't understand you, will you explain that, sir?

A. That is a method of working back and forth until you arrive at the correct answer.

Q. Trial and error?           A. Yes.

Q. Now, Mr. Mattison, did you contact all of the stockholders personally to secure options to purchase their stock?

A. All but one with 10 shares of stock.

Q. Who was that?

A. A Mrs. Mary Gambel.

Q. Where did she live?

A. Back in New York State.

Q. And how did you contact her? [118]

A. She had 10 shares which were in the hands of the First Security Bank with the authority to handle it.

Q. Did you contact all of the rest of the stockholders of the Wescott Oil Company yourself to ask if you could buy their stock?           A. I did.

Q. Did you contact J. D. Dollar, sir?

A. I did.

(Testimony of Frank N. Mattison.)

Q. Have you met J. D. Dollar?

A. Yes, sir.

Q. Mr. Mattison, you were the former Secretary-Treasurer of the Wescott Oil Company, were you not?

A. That is right.

Q. As such, what were your duties?

A. Accounting duties.

Q. You kept books?

A. With assistance, yes.

Q. From whom did you get assistance?

A. We have an Office Manager, plus a considerable amount of clerical help.

Q. And what else did you do there besides keep the books and accounting?

A. Pay the bills, sign the checks, sign deeds, certificates—

Q. Have you had any formal training in accounting [119] matters, Mr. Mattison?

A. Any what?

Q. Any formal training in accounting matters?

A. From experience since 1918.

Q. No formal education?

A. Yes, correspondence courses, books, etc.

Q. Did you make out the corporation Income Tax Return, sir?

A. I did, up until the last two or three years.

Q. Until the last two or three years?

A. Yes.

Q. Who made out the corporation returns for 1952 and 1953?

(Testimony of Frank N. Mattison.)

A. The former Office Manager, then Secretary and Treasurer, Wayne Hancock.

Q. Why did you relinquish that task to him?

A. I was beginning to take things a little easier, I didn't do very much work.

Q. At the time you made out the corporation Income Tax Return, did you have help or advice from anyone in doing that?      A. No, sir.

Q. Did you ever have occasion to do any research on Federal tax matters, Mr. Mattison?

A. Yes, sir. [120]

Q. You did, in what connection was that, sir?

A. We have a Prentice-Hall book on taxation.

Q. And you did research in that for yourself, did you?      A. For years.

Q. For the purpose of preparing the corporation returns?      A. That, and individual.

Q. Your own individual return?

A. My own and Mr. Wescott's.

Q. Did you make out returns for anyone else, sir?

A. Mr. Wescott's sister, I helped—not make them out.

Q. I think you testified that you had been associated with Mr. Wescott in business and personally for a good many years.      A. That is right.

Q. And that you knew that he had been negotiating with the Continental Oil Company as the controlling stockholder of the Wescott Oil Company in Continental's attempting to buy out the Wescott Oil Company?



(Testimony of Frank N. Mattison.)

A. I understood it was to buy the shares of the company.

Q. Pardon me, sir?

A. I understood it was to buy the shares of [121] the company.

Q. Yes. You did know that these negotiations had been going on?           A. I did.

Q. Now, did you know why it was that Continental Oil Company wanted to come back into the territory that they had formerly been in?

A. I did.

Q. What was that reason?

A. The pipeline, built primarily by the Continental Oil Company from Wyoming to Salt Lake which would connect with the pipeline from Salt Lake to Boise opened up a market in this territory for their products.

Q. Would you say it was almost essential for them to come back in here if they wanted to compete in this area?

A. As I understood, they were coming back regardless if they purchased any of the assets of the Wescott Oil Company or not.

Q. Wouldn't that have been difficult for them to do without having any filling stations in the area?

A. The other majors have done it.

Q. Did they have to secure permission from any governmental agencies to come back in here on the pipeline without owning some property interests in this territory? [122]

(Testimony of Frank N. Mattison.)

A. I don't believe so, sir. I'm not familiar with the pipeline legal——

Q. Now, did you attend any of the meetings held by Mr. Wescott and the representatives of Continental Oil Company in 1951, sir?

A. I am pretty sure I did not.

Q. You are pretty sure you did not. Did you know on what basis they were negotiating?

A. Yes; I did.

Q. And what was that basis?

A. Trading Continental stock for Wescott Oil Company stock.

Q. And you knew that plan didn't go through?

A. Later, yes.

Q. When did you find that out?

A. Some time late in '51.

Q. Then, I assume that you knew in 1952, representatives of the Continental again approached Mr. Wescott about the same transaction?

A. I did.

Q. And at this time they were talking about buying the stock for cash, were they not?

A. That is what I understand, yes.

Q. Mr. Wescott asked you to attend some of those meetings, did he not? [123] A. One.

Q. Only one?

A. As far as I remember, one.

Q. You only recall having attended one of those meetings, where was that held?

A. In Denver.

Q. Didn't you attend any of the meetings held

(Testimony of Frank N. Mattison.)

in Boise?           A. I did not.

Q. What was the purpose of Mr. Wescott asking you to attend that meeting down in Denver, do you know?           A. To give him accounting advice.

Q. In what matters, on the price that he should get for the stock?           A. That is right.

Q. You knew, didn't you, that in those negotiations they had arrived at a fairly definite price of \$607 per share for the stock?

A. I don't recall the exact amount, it was somewhere close to that.

Q. Did you know that those negotiations did not result in any agreement of sale?           A. I did.

Q. And do you know what the reason was that they did not? [124]

A. Well, I really couldn't speak for them, no, sir.

Q. You don't know why those negotiations broke down?           A. No; I do not.

Q. You do not know?           A. No.

Q. Do you recall that last Wednesday your deposition was taken, Mr. Mattison?           A. Yes, sir.

Q. Have you seen that deposition?

A. I might have glanced at it.

Q. May I show it to you?

Mr. Patten: You may put it in evidence.

Mr. Foye: I don't intend to put it in evidence. I'm not trying——

Mr. Patten: It will be very helpful.

Mr. Foye: Well, I have not planned to. You may offer the deposition in evidence, Mr. Patten, but I

(Testimony of Frank N. Mattison.)

have no plans to do that. Do you object if I show it to him?

The Court: The original of the deposition may be published.

Q. (By Mr. Foye): I show you page 13 of the original deposition of yours, taken last Wednesday, and ask you—not quite half way down the page—(reading): “Question: And did you know [125] what the reason was that he was no longer negotiating with the Continental?” You see that, Mr. Mattison?

A. I do.

Q. And what was your answer?

A. They refused to buy the stock.

Q. Thank you, sir. Do you know why they refused to buy the stock?

A. No, sir.

Q. Do you know today why they refused to buy the stock, sir?

A. No, sir.

Q. You do not know?

A. No, sir.

Mr. Patten: Did they refuse to buy the stock at any price or did they refuse to buy it at this price?

Mr. Foye: After all I asked him does he know the reason they refused to buy the stock?

Mr. Patten: At any price, or the price you are asking?

Q. (By Mr. Foye): I will ask you, Mr. Mattison, if you knew why they refused to buy the stock at the price he asked?

The Witness: They did not explain it to me why they didn't, no.

Q. Who is “they”?

A. The Continental Oil Company.

(Testimony of Frank N. Mattison.)

Q. I take it then you do not know?

A. That is right.

Q. And you never knew?

A. To the best of my knowledge, no.

Q. Did it ever occur to you to ask, Mr. Mattison, after all of the negotiations had gone on and they had arrived, or come close to arriving at a price, did it ever occur to you to ask why those negotiations broke down?

A. I'm not very curious.

Q. You never asked?                   A. No, sir.

Q. Did you ever tell C. J. Wescott that you thought the reason they didn't buy the stock was that they wanted to liquidate the corporation and buy the assets?

A. I don't recall talking to Mr. Wescott in that line, no.

Q. I take it that the answer to my question is "no"?                   A. That is right.

Q. You did know that those negotiations broke down, did you not, Mr. Mattison?

A. Naturally.

Q. Pardon me?                   A. Naturally. [127]

Q. Why, naturally?

A. I don't see how they could talk to me if they had not broken down.

Q. Did they come to you after those negotiations broke down, Mr. Mattison?

A. I went to them.

Q. You knew then, before you went to them that they had broken down?                   A. I think I did.

(Testimony of Frank N. Mattison.)

Q. How did you find out?

A. Well, the meetings stopped and no more discussion with the Continental Oil Company as far as I knew, so then, I presumed——

Q. How did you know that the meetings stopped?

A. Mr. Wescott was in the same office that I am in and I knew practically what he was doing most of the time, whether he was in town or out-of-town.

Q. Did you go to the last meeting that he had?

A. The last meeting I went to was the meeting I had.

Q. That is not the question. I asked you, Mr. Mattison, I asked, did you go to the last meeting that Mr. Wescott had with the Continental?

A. I couldn't swear whether that was the last or [128] not. I went to one meeting with him.

Q. That was in Denver?           A. That is right.

Q. Did you stay overnight in Denver, Mr. Mattison?           A. I did.

Q. At what hotel did you stay in?

A. The Brown Palace.

Q. Where were the meetings held?

A. In the office of the Vice-President in the Continental Oil Company Building.

Q. Were you present at the meeting at which Continental told Mr. Wescott they would not buy the stock?           A. I don't believe so.

Q. How did you find out that they wouldn't buy the stock?

A. Well, that question, you asked the question

(Testimony of Frank N. Mattison.)

awhile ago. I presume that I must have got word from Mr. Wescott; it's possible.

Q. It's possible that you must have got word from Mr. Wescott?      A. Yes.

Q. Is it also possible that you could have been at that meeting?

A. I did not stay in the meeting all of the time, so, if that came up it must have been some time when I was [129] out of the office.

Q. Now, will you answer the question? Is it possible that you could have been at the meeting?

A. It is possible. My memory isn't quite that good. I could have been.

Q. You remember the first day you came to Idaho, don't you, Mr. Mattison?      A. Yes, sir.

Mr. Patten: Which meeting are you talking about?

Mr. Foye: The last which Mr. Wescott had with Continental Oil Company.

Mr. Patten: Will you place the date, please?

Mr. Foye: I don't know that date.

Mr. Patten: How could he know what date?

The Court: I think you have the witness confused, Mr. Foye. He said he was at one meeting. Now, he doesn't know whether that was the last one or not.

Mr. Foye: I think subsequent to that time, your Honor, I asked him if he was at the meeting that——

The Court: He may understand you, but I do not. He does not know whether you are talking

(Testimony of Frank N. Mattison.)

about the last meeting or the meeting he attended. You had better clarify it.

Mr. Foye: I certainly will, sir. [130]

Q. (By Mr. Foye): Were you at the meeting at which Continental told Mr. Wescott that they would not buy the stock?

A. I can't recall any conversation of that character.

Q. Was it possible that you could have been at that meeting?

A. I would have remembered, I think, that kind of a turn down on the stock. That is what you are asking, that they turned him down in the purchasing of the stock?

Q. You can say positively that you were not at that meeting? A. No; I can't say.

Q. You might have been?

A. There was a lot of things going on there in a few months there, Mr. Wescott's sickness and the subsequent developments in the turning over of the company and starting a new company. My memory is good, but it isn't perfect.

Q. Might you have been at that meeting?

A. It is possible.

Q. After those negotiations broke down, Mr. Wescott started looking for someone to liquidate the company, did he not?

A. I didn't get that question. [131]

Mr. Foye: Will the Reporter read the question, please?



(Testimony of Frank N. Mattison.)

(The last question was read by the Reporter.)

A. This I do not know.

Q. (By Mr. Foye): Mr. Mattison, I direct your attention to page 28 of that deposition, the third line from the top. That is your answer, isn't it, sir, to a preceding question that I asked you?

A. The answer here that I have is, "Well, I believe if it had not been liquidated by me that he would have gotten someone to liquidate it on the same terms."

Q. Was he looking for someone to liquidate the corporation?

A. I didn't say that in this, and I don't know yet.

Q. You think he might have gotten somebody else to liquidate it if you hadn't liquidated it, isn't that right, Mr. Mattison?

A. I think he could have.

Q. That is what you said in your deposition, sir. Then subsequent to the time of the close of the negotiations of Mr. Wescott broke down you started negotiating with Continental yourself, is that right?

A. That is right. [132]

Q. And you thought you could liquidate the corporation without incurring any additional tax out of the corporation, isn't that right, sir?

A. Any additional tax against the corporation, yes.

Q. When did you begin your negotiations with the Continental?

(Testimony of Frank N. Mattison.)

A. The latter part of April, or early in May.

Q. How many meetings did you have, sir, do you recall?      A. At least two.

Q. With whom?

A. Mr. Lidell, Mr. Aikens, Mr. Smith.

Q. You had one in Denver and one in Boise?

A. That's right.

Q. Do you recall whether there might have been any more than that?

A. I might have talked to some of them individually.

Q. In person?      A. Yes.

Q. Did you have some telephone conversations about it?      A. Yes.

Q. Some letters written back and forth?

A. No letters.

Q. No letters? I direct your attention to page 12 [133] of your deposition, sir. You make reference there to a letter written to you by Mr. Aiken of the Continental Oil Company, did you not, dated May 8, 1952?      A. I read it, yes.

Q. So there were some letters going back and forth between you?

A. As far as I know that is the only letter I could find.

Q. You didn't write to them?      A. I did not.

Q. How long before that letter was written, do you recall, that you were negotiating with Continental?      A. From one to two weeks.

Q. At that time you were negotiating with Con-

(Testimony of Frank N. Mattison.)

Continental to sell the operating assets of the Wescott Oil Company to them, is that right?

A. That is right.

Q. And how many meetings did Mr. Wescott attend of those meetings at your request?

Mr. Patten: Are these Mr. Mattison's meetings?

Mr. Foye: Yes, sir; that's right.

Mr. Patten: With the Continental?

The Witness: One or two.

Q. (By Mr. Foye): One or two, you are not sure which? [134] A. Not positive.

Q. You are sure that there could not have been more than two?

A. I don't believe there was any more than two.

Q. How did you finally arrive at a price for Continental to pay for the assets?

A. They made the offer.

Q. Was it immediately agreeable to you, that price? A. The price was agreeable, yes.

Q. The price was agreeable? A. Yes.

Q. There were no negotiations about price?

A. No. Some of the wording was—I didn't like, however, the price was never changed.

Q. The price was always—the original proposition that they made to you, as far as the price goes is the one you accepted? A. That is right.

Q. How many proposed agreements did the Continental draw up and submit to you for your approval before you finally approved one?

A. One tentative, and they then took out all of

(Testimony of Frank N. Mattison.)

the objectionable features and the May 12 offer was submitted as is.

Mr. Foye: Will you read back the answer? [135]

(The answer was read by the Reporter.)

Q. (By Mr. Foye): So there was only one proposed agreement before the one in evidence here?

A. The only one I can remember in writing, yes.

Q. Were—was the wording of the agreement discussed between yourself and Continental verbally before it was set down in writing the first time?

A. Some features of it.

Q. Some features. Incidentally, did you agree to the agreement sent to you by Mr. Aiken by that letter of May 8, 1952, do you recall?

A. I think immediately after that the agreement of May 12 was drawn.

Q. In other words the one he enclosed to you with that letter was not acceptable to you, is that right, of May 8?

A. Did I say he enclosed an agreement?

Q. Yes. That was page 12.

A. That might have been preliminary, a copy of the offer and at that date, which was May 8, and the other there of May 12, that must have been satisfactory at that time.

Q. Now, at what date did you notify Continental of your acceptance of the offer of the agreement of May 12? [136]

A. I don't think I kept a copy of that letter accepting the offer.

Q. You haven't any idea what date that accept-

(Testimony of Frank N. Mattison.)

ance was made? Perhaps I can refresh your recollection with Exhibit G. Exhibit G, which is in evidence as the offer of agreement between yourself and the Continental Oil Company stating the offer would be good only until June 11, 1952?

A. That's right.

Q. Would it be reasonable to assume that you notified them of your acceptance prior to June 11, 1952?

A. I believe so.

Q. Would June 10 be a fair estimate?

A. Some time between the 8th and 10th, I would say.

Q. Thank you. Now, at the time you entered the agreement with Continental you thought that you could buy the stock of the stockholders for \$607 a share, did you not?

A. Yes.

Q. And after you signed the agreement you secured options to purchase the stock from the stockholders of Wescott Oil Company?

A. That's right.

Q. And those options were accompanied by Escrow Instructions, were they not? [137]

A. Yes, sir.

Q. The options were to expire on May 30, 1952?

A. I think they speak for themselves.

Q. I guess you are right. Do the copies specify the expiration date?

Mr. Patten: I think so.

Q. (By Mr. Foye): May I show you Exhibit H? From Exhibit H, I would like to extract your option to purchase the stock of C. J. Wescott and

(Testimony of Frank N. Mattison.)

ask you, please, sir, what day that option was acquired on, what date the option was acquired?

A. It's dated the 31st of May.

Q. I'm through, are you?

A. I think May 30 was a holiday.

Q. I see. The rest of the options, I think you stated, were exercised about May 30, 1952, were they not?

A. I believe so.

Q. Now, Mr. Mattison, who prepared the options and the escrow instructions and the letters exercising the options?

A. Mr. Breshears.

Q. Did he prepare all of these at one time, did he?

A. I couldn't say to that, that could be.

Q. Did you notice that the dates were left blank on all of those documents? [138]

A. That is right.

Q. Do you think he prepared them all at one time?

A. He probably did ahead of time.

Q. Yes; before any action was taken, that is to get the option, or to get the options before the escrow, or the options on anything like that?

A. Oh, I think so.

Q. Now, had Mr. Breshears represented the Wescott Oil Company before, do you know, Mr. Mattison?

A. Yes; he was on a retainer.

Q. Had he ever represented you before, individually?

A. As far as I know I never had a lawyer before.

Q. Mr. Breshears did not represent you before?

(Testimony of Frank N. Mattison.)

A. That's right.

Q. Was the fee paid Mr. Breshears by the corporation for 1952 his normal retainer, that is, \$2,500?

A. That was in addition to——

Q. In addition to his normal retainer fee?

A. Yes.

Q. Can you tell me, please, sir, for what services that he performed in addition to the normal retainer fee that justified the additional fee?

A. The excessive amount of legal work in drawing up the——

Q. Was it drawing the options and the [139] escrow instructions?

A. That is right.

Q. Letters exercising the options?

A. Yes.

Q. Now, do you know how much you paid him, personally, in 1952, sir?

A. \$2,500.

Q. Do you recall what that was for?

A. That was for my part of the legal work.

Q. In other words, you and the corporation both paid Mr. Breshears a part of the fee for drawing up these documents, that is the Resolution of June 13, 1952, and April 28, 1953?

A. That undoubtedly would be the corporation.

Q. Did you and the Wescott Oil Company split the fee that was charged for preparation of these documents?

A. I presume they were the same amount, I'm not sure on that whether we split or whether he billed me.

Q. My point, Mr. Mattison, did you both pay

(Testimony of Frank N. Mattison.)

Mr. Breshears some money for doing the same work?

A. Not necessarily for doing the same work, no.

Q. Well, now, you testified a few minutes ago that the corporation paid Mr. Breshears a fee for preparing the options and the escrow instructions and the letters of exercising the option, do you recall that testimony? [140]      A. Yes.

Q. Did you also pay him a fee for some of that work or all of it?

A. Most of my fee was undoubtedly paid, as far as I can figure it out myself, was for making the agreements, deeds, etc., from Mrs. Mattison and myself to the Wescott Oil Corporation which was not billed against the Wescott Oil Company.

The Court: Mr. Foye, how much longer do you think you will be?

Mr. Foye: Well, I can't anticipate that, your Honor. I'm not very close to being through.

The Court: I think we will adjourn until tomorrow morning at 10:00 o'clock.

(The Court adjourned at 4:30 o'clock p.m.)

September 11, 1957—10:00 o'Clock A.M.

The Court: Mr. Mattison was on the witness stand, was he not?

Mr. Foye: I have a witness coming in from out of town.

(Mr. Frank N. Mattison resumed the witness stand.)



(Testimony of Frank N. Mattison.)

Cross-Examination

(Continued)

By Mr. Foye:

Q. Mr. Mattison, do you recall going to Mr. Fred Costello and showing him your plan for acquiring the assets of the Wescott Oil Company and selling them to the Continental Oil Company?

A. Yes.

Q. Was the plan written out at that time, do you recall?

A. I'm not sure.

Q. You think it might have been written out, sir?

A. It could have been.

Q. Did Mr. Wescott go with you at that time?

A. No, sir.

Q. Did Mr. Wescott ever go with you to see Mr. Costello as far as you recall?

A. As far as I know, I have never seen [142] Mr. Wescott in Mr. Costello's office.

Q. If the plan was written out, sir, do you recall who might have written it out?

A. The offer and agreements, is that what you are talking about? No.

Q. Well, that is what I was asking. Did you use a proposed copy of the offer of agreement furnished you by Continental or did you have it written out in your own handwriting?

A. No; I used theirs.

Q. You used the offer of agreement furnished by Continental Oil Company?

(Testimony of Frank N. Mattison.)

A. That is right.

Q. You did show him a plan that was written out, did you?

A. I don't remember if that was shown to him in his office or not.

Q. Did you see him at any place other than in his office, sir?      A. Yes.

Q. Where was that? I am talking prior to——

A. At another office in the Idaho Building.

Q. Pardon me, sir?

A. Another office in the Idaho Building.

Q. And whose office would that be? [143]

A. I believe it was my attorney's office.

Q. Mr. Breshears?      A. Yes, sir.

Q. Now, this conference with Mr. Costello took place, did it, before the plan was set into operation? Do you recall about when it was that you went to Mr. Costello?      A. Not the exact date, no.

Q. Generally?

A. I imagine it would be two or three days before the 16th of June.

Q. You sure it was not in May, Mr. Mattison?

A. I'm not positive. I can't remember.

Q. Now, I assume that the reason you went to Mr. Costello with this plan was to secure advice on what, if any, tax effect it would have on the Wescott Oil Company?      A. That is right.

Q. Did you also ask him what effect that plan would have on your personal tax situation, Mr. Mattison?

A. I don't believe I asked him that question.

(Testimony of Frank N. Mattison.)

Q. You don't recall asking him that?

A. No, sir.

Q. Then your purpose in going to him was to protect the interests of the corporation?

A. Yes, sir.

Q. Who paid the bill, Mr. Mattison, for that advice? [144]

A. I did.

Q. You did, personally? A. Yes, sir.

Q. That was \$750? Was it, sir? A. Yes, sir.

Q. Do you recall stating to Revenue Agent C. O. Peterson, Jr., that you paid Mr. Costello \$750 for assistance in setting up and reporting this transaction on your return?

A. To the best of my knowledge I did not.

Q. Now, Mr. Mattison, at the risk of being repetitious, I would like to call your attention to the Escrow Instructions for a moment, they are Exhibit H. I believe all of the Escrow Instructions accompanying each of the options are the same, are they, sir?

A. Yes.

Q. I will ask you to just follow that, if you will, please. Now, subsequent to the time that the Certificates of the individual stockholders in the Wescott Oil Company were exchanged for one certificate standing in your name, was that Certificate assigned by you to the Wescott Oil Company, as provided in the Escrow Instructions? That is the bottom of the first page of the Escrow Instructions, Mr. Mattison, where it says, "Along with a duly executed assignment of such stock from said Mattison to the Wescott [145] Oil Company."

(Testimony of Frank N. Mattison.)

Mr. Patten: What page is that?

Mr. Foye: The first page of the Escrow Instructions.

Q. (By Mr. Foye): I think that refers to the one certificate of stock standing here, was that certificate assigned to the Wescott Oil Company as recited in the Instructions?

A. I presume the certificate would speak for itself, sir.

Q. I don't believe the certificate has any such assignment on it. Would there be a separate assignment assigning that certificate to the Wescott Oil Company? A. I don't remember it.

Q. You don't remember whether that was done or not? A. No, sir.

Q. Well, do you recall that the certificate was surrendered by the Escrow Agent to you in accordance with the letter which was placed in evidence yesterday by Mr. Gardner? A. I do.

Q. And at that time did you surrender it to the Wescott Oil Company in exchange for the assets as provided on the second page of the Escrow Instructions? Paragraph No. 2, where it says, "Upon written request furnished by Mattison to the said Escrow Agent to surrender the stock [146] to the Wescott Oil Company in exchange for the same to transfer or assignment, and filing, etc."

A. That is on page 2?

Q. Yes, sir. Paragraph No. 2, I believe. Was that done, sir? A. I think so.

Q. Do you recall that it was done at that time,

(Testimony of Frank N. Mattison.)

then, when you surrendered the certificate to the Company, was it marked "Non-transferable"?

A. I believe so.

Q. And what was done with it after that, at that time, if you recall, sir?

A. It was in my hands at that time up until the final dissolution.

Q. It was returned by the corporation to you, sir?

A. I think it was in my hands, yes, sir.

Q. The corporation returned it to you?

A. Yes, sir.

Q. Now, you conveyed the operating assets of the Wescott Oil Company to the Continental Oil Company on the same day that they were conveyed to you, did you not, sir?

A. Yes, sir.

Q. And on the same date Continental paid \$1,400,000 to the Escrow Agent—I believe that has been stipulated. Now, you didn't have enough money to swing the deal any [147] other than through these means, did you, Mr. Mattison?

A. I didn't have enough, no, sir.

Q. Do you recall after the end of May of 1952, the corporate accounts payable were run through the cash account of the corporation rather than being credited to the accounts payable account?

A. I think the same procedure was followed as had been followed in the past.

Q. In other words, accounts payable were first credited to the accounts payable account on the books of the corporation?

A. The company attempted to pay cash.

(Testimony of Frank N. Mattison.)

Q. I see. That was true for all of its operations, was it?

A. Certain taxes were set up in accounts payable.

Q. What type taxes were these?

A. The gasoline taxes.

Q. All other liabilities were run through a cash account, sir?      A. The greater part of them.

Q. Now, do you recall any change in the system subsequent to the end of May, 1952, in other words, did you continue to accrue the gasoline taxes as accounts payable, or did you run them through the cash account, too, after the amount was [148] determined?

A. After the 16th of June there was no accrual in the gas taxes, we had no more.

Q. I believe you testified yesterday that the corporate Income Tax for 1952 were paid by the corporation in March of 1953, is that right?

A. That is correct.

Q. Now, the Balance Sheet of the corporation, as of December 31, 1952, showed the exact amount of those State and Federal Income Taxes, did it not?      A. I believe so.

Q. I believe you also testified yesterday that you resigned as an officer of the corporation on June 13, 1952, because you were afraid of the tax consequences of selling the assets of the corporation—I believe that is it. Do you recall that testimony?

A. I believe that is what I said.

Q. Were you afraid of the tax consequences to

(Testimony of Frank N. Mattison.)

the corporation, Mr. Mattison? A. Yes, sir.

Q. You were afraid if you sold the assets as an officer of the corporation that it might incur some additional tax on the corporation?

A. That is right.

Q. Mr. Mattison, is it correct to say that your motivating purpose in going into this transaction was to [149] secure the assets of the Wescott Oil Company? A. I believe that is correct.

Q. When you passed the stockholders' resolution of June 13, 1952, was it your intention to completely liquidate the corporation and wind up its business as soon as possible?

A. I think it so states in the resolution.

Q. That was your purpose in passing the resolution? A. I believe so.

Q. Could you tell me, please, what accounts for the difference between the amount of the cash on the books of the Wescott Oil Company as of December 31, 1952, and the amount of cash received by you from the corporation in 1953?

A. The difference would be the Federal and State Income Tax.

Q. No, sir. May I refresh your recollection? I think the corporate balance sheet as of December 31, 1952, had accrued as liabilities the Federal and State Income taxes, do you recall that?

A. Yes, sir.

Q. And that would have been deducted from the cash balances of the corporation as of the end of 1952, wouldn't it?

(Testimony of Frank N. Mattison.)

A. No; it would not. [150]

Q. It would not? A. It would not.

Q. Well, let me ask you this then, was there any difference between the cash account as of December 31, 1952, that is the known accounts payable for the State and Federal Income Taxes, between that and the amount you received in 1953?

A. There shouldn't have been, no.

Q. Mr. Mattison, wasn't there an insurance refund in 1953, and a small interest refund received in 1953?

A. The interest refund was, I think, in April of 1953, and the insurance, I'm not positive, but I believe it was September of 1953.

Q. Both would increase the cash balance of the corporation, would they not?

A. The corporation had been dissolved before the insurance check was received.

Q. Well, would it be fair to say that any amount you received in 1953, upon dissolution of the corporation, over and above the balance of the cash accounts of December 31, 1952, less the State and Federal Income Tax payment was attributable to the insurance refund and interest refund?

A. That is right.

Q. Going back to your negotiations with Continental [151] Oil Company, I think you stated that they submitted at least one proposed form of offer and agreement to you before you accepted one, is that not true? A. A tentative.

Q. A tentative, and you rejected that one?



(Testimony of Frank N. Mattison.)

A. That is right.

Q. And then they submitted another one, did they not?      A. That's right.

Q. Did you go over either one of these agreements with Mr. Wescott before you accepted one?

A. I'm not positive over that. I may have showed it to him.

Q. You may have showed it to him?

A. That is possible.

Q. To ask his advice?

A. I asked a great deal of advice from a great many people. I could have.

Q. Did you ask advice of any one else on the particular agreement, do you recall?

A. I believe it was submitted to my attorney.

Q. That was Mr. Breshears?      A. Yes.

Mr. Foye: That is all I have. [152]

### Redirect Examination

By Mr. Patten:

Q. Mr. Mattison, when you paid Mr. Breshears the \$2,500 for his services, did he submit you a bill?

A. Yes, sir.

Q. Did he break that bill down into just what was encompassed in that bill, sir?      A. No, sir.

Q. You paid it because you thought it was a fair fee for the service, is that right?      A. Yes, sir.

Q. You really don't know what it did encompass?

Mr. Foye: Well, I will object to that. It is an attempt to impeach the witness.

(Testimony of Frank N. Mattison.)

The Court: No; it is redirect examination. You went into that.

Q. (By Mr. Patten): Did you know what was encompassed?

Mr. Foye: I think he testified yesterday as to what was encompassed and I think Mr. Patten is asking him to state that he does not know what was encompassed in it.

The Court: He may answer.

The Witness: I received a statement simply showing the fee of \$2,500. [153]

Q. (By Mr. Patten): And did you pay it?

A. I paid it.

Q. Now—Exhibit H, please. Calling your attention to the option agreements and Escrow Instructions with Mr. C. J. Wescott, will you look at that, please, sir? A. I have it here.

Q. Will you look at the date, please, sir?

A. The date on this is May 31. I'm not positive that is my writing.

Q. Can you advance any reason why you waited so late to obtain the option from Mr. Wescott?

A. I had a verbal option with Mr. Wescott prior to this.

Q. Did you consider that satisfactory?

A. To me, yes, sir.

Q. Now, in the operation of your business, is it possible to accrue all of the liabilities of the corporation? A. Not accurately, approximately.

Q. Did you ever have claims and demands made against the corporation for which you had accrued

(Testimony of Frank N. Mattison.)

no liabilities?           A. Yes; several months later.

Mr. Patten: That is all.

Mr. Foye: That is all, Mr. Mattison, thank [154] you.

(The witness left the stand.)

Mr. Patten: I would like to call Mr. Miller.

W. F. MILLER

a witness called on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: W. F. Miller.

Direct Examination

By Mr. Patten:

Q. Where do you reside, sir?

A. In Boise.

Q. What is your address, please, sir?

A. Route 4.

Q. And what is your office address?

A. 227 Idaho Building.

Q. And what is your occupation?

A. I am a Certified Public Accountant.

Q. Doing business under what style?

A. Partnership with Costello, Costello and Miller.

Q. And did you state where your offices were?

A. Yes, sir.

(Testimony of W. F. Miller.)

Q. How long have you been engaged in Public Accounting, sir?      A. Nearly ten years. [155]

Q. Now, sir, what was your occupation before you became a Public Accountant?

A. I was Revenue Agent with the Federal Government.

Q. And how long were you a Revenue Agent?

A. Four and a half years as a Revenue Agent and a little over two years as a Deputy Collector.

Q. And what is your education, sir?

A. I took the LaSalle Extension University course along with the C.P.A. Coaching, and passed the C.P.A. Examination.

Q. Are you a C.P.A. in the State of Idaho?

A. That is right.

Q. Now, in connection with your occupation as a Public Accountant and as a Revenue Agent, have you had occasion to compute income gains?

A. That has been the major part of my work for the last 17 years.

Q. Have you seen the books and records of the Wescott Oil Company?

A. I think I have glanced at them. I have not gone through them thoroughly, no.

Q. Have you seen Mr. Wescott's tax return?

A. I have.

Q. I mean Mr. Mattison's.

A. I beg your pardon, I did not see Mr. Wescott's; [156] I did see Mr. Mattison's return.

Q. By applying accepted accounting principles to the Exhibit and the stipulation, of which you

(Testimony of W. F. Miller.)

have been informed, have you been able to compute Mr. Mattison's gain in the transaction involving the stockholders of the Wescott Oil Company during 1952?      A. I have.

Q. And what is that gain, sir?

A. The gain is \$23,276.29.

Q. I am handing you a document, admitted in evidence as Plaintiff's Exhibit T, and ask if you are familiar with that document?

A. It's a Ninety-day Letter, yes, sir, I am.

Q. You have previously examined this?

A. That is right.

Q. Now, by applying accepted accounting principles to the stipulations and Exhibits in this case, do you know of any accepted accounting principles upon which it could be determined that Mr. Mattison realized a gain of \$114,900.71 during the calendar year 1952?      A. I do not.

Q. By the same process, do you know any basis or any accounting principles upon which it might be determined that the basis of Mr. Mattison's assets were disposed of were \$1,245,923.43? [157]

A. No, sir.

Q. Now, Mr. Miller, I would like to ask you a hypothetical question, and for the purposes of this hypothetical question we will assume that during the calendar year of 1952 Mr. Mattison purchased the assets of the Wescott Oil Company and resold those assets, can you compute what his gain would be in the taxable year 1952, based on that assumption?      A. Yes.

(Testimony of W. F. Miller.)

Q. And what would that gain be, sir?

A. The gain would be \$23,276.29.

Q. Handing you Exhibit A, sir, can you tell us what that is?

A. A copy of Frank N. and Ida G. Mattison's Federal Income Tax Return for the year 1952.

Q. What gain is reported in there on that transaction? A. \$23,276.29.

Mr. Patten: Thank you, sir. You may inquire.

#### Cross-Examination

By Mr. Foye:

Q. Mr. Miller, you are associated, are you, with Mr. Costello in the practice of Public Accounting?

A. Yes, sir.

Q. And the firm is known as Miller and Costello?

A. Costello and Miller. [158]

Q. Costello and Miller, I am sorry. Did you represent Mr. Mattison in the case now on trial before the Internal Revenue Service, sir, your firm?

A. The first that I had was with the conference in the Appellate Division.

Q. Did you represent him?

A. I sat in on the conference, yes, sir.

Q. As a representative of Mr. Mattison?

A. I believe so.

Q. Yes. Your firm represented him at the Administrative Level prior to the Appellate Staff, did it not, sir?

A. Mr. Costello did whatever was done on that I——

(Testimony of W. F. Miller.)

Q. Do you know whether your firm represented him at the Administrative Level?

A. Mr. Costello is my partner and he handled it, yes.

Q. Is your partner authorized to practice before the Internal Revenue Department?

A. I don't believe so.

Q. Did you accompany him to any of the conferences had by the Internal Revenue Service prior to this?      A. No.

Q. But your firm did represent him prior to the Appellate Staff hearing, is that right? [159]

A. Anything that was done prior to the time that I sat in on it Mr. Costello handled, he is my partner, and therefore our firm did some work.

Q. Thank you. Has your firm been paid a fee for the work, yet, Mr. Miller?

A. Yes, sir; he was paid a fee, we received a fee.

Q. Have you received your entire fee for that work?

A. The billing of the accounts is the work that Mr. Costello handles, he takes care of it.

Q. Have you or Mr. Miller received your entire fee for the work that was done by you or Mr. Costello in representing Mr. Mattison at the administrative proceeding?

A. You mean Mr. Costello?

Q. I'm sorry.

A. You will have to ask Mr. Costello. When he

(Testimony of W. F. Miller.)

handles the work in our office he takes care of the billing. I had nothing to do with the billing of the account and I don't know.

Q. In other words, as far as you know you have not been paid anything for that work, is that right?

A. Well, the last fee we received from Mr. Mattison, was the last bill that we sent for which we were paid which was in the early part of '53, I think, and I [160] sat in on the conference then.

Q. You have not been paid for that?

A. No; we have received no fee, I am sure.

Q. You have not been paid for the work that you did of representing Mr. Mattison at the administrative proceeding?

A. No, sir; we have not been paid since then.

Q. Now, you gave a figure there, at the beginning of your testimony for the gain accruing to Mr. Mattison upon the transaction in question, did you not?      A. That is right.

Q. Was that first figure of gain that you gave based upon a recognition of gain upon which basis, the liquidation of the corporation?

A. Based on the partial liquidation.

Q. Based on the partial liquidation of the corporation?      A. That is right.

Q. Yes. Now, what Exhibits have you examined, personally, Mr. Miller, the Exhibits which are in evidence in this trial?

A. The Ninety-Day Letter and Mr. Mattison's tax return.



(Testimony of W. F. Miller.)

Q. Did you examine them before you came into the courtroom this morning? [161]

A. Yes, sir.

Q. What other Exhibits?

A. I don't remember them all.

Q. Did you examine any other Exhibits in this case?

A. I didn't sit in on all of this trial, I don't know what all the Exhibits were.

Q. Now, Mr. Patten asked you to compute the gain accruing to Mr. Mattison on this transaction assuming that gain was recognizable upon the sale of assets, did he not?

A. Yes; I believe he mentioned that.

Q. And you gave, as I recall, substantially the same figure for that gain as you did for the gain, recognized gain on the partial liquidation of the corporation, did you not?

A. For the year 1952 it was the same, yes, sir.

Q. Yes, sir. Now, would you please tell me, sir, how you arrived at a figure for basis in your computation of gain in 1952, assuming that Mr. Mattison sold the assets of the corporation, that gain was recognizable?

A. Mr. Mattison paid out—his cost of \$4,841 for 25 shares in 1945. He purchased 2,164 shares—he paid out in—for the 2,164—if he bought the assets he paid \$1,347,480.57, his expenses were \$3,677.07, leaving a total cost and expenses of [162] \$1,355,998.89.

Q. And that was the basic figure that you used

(Testimony of W. F. Miller.)

in computing gain, assuming that Mr. Mattison sold the assets?

A. That is right, and he received the net figure, he received \$1,689,399.07, and assumed liabilities of \$310,234.90, and the net assets of \$1,379,275.18—that is what he received, and he paid the figure that I gave before, making a net gain of \$23,276.29.

Q. In other words, Mr. Miller, you treated as a basis upon—all my references are to your hypothetical question—assuming gains recognizable on the sale of assets in that hypothetical question, you used as a figure for basing his entire cost on the entire stock, is that not right, sir?

A. That is right, that is what he paid.

Mr. Foye: That is all.

The Witness: He didn't have—

Mr. Foye: No further questions.

The Court: Let him explain.

The Witness: I'd like to explain the last answer. He did not have, that is what he paid. That is what he received, there was—maybe some kind of a possibility that he was going to receive more but if there were a sale of the assets, then certainly, in my opinion there was an excellent chance that there was a sale of the assets, then there was a tremendous gain to the corporation and the [163] taxes would be a lot more and Mr. Mattison had no assurance whatsoever that he was not going to receive anything, that he was going to have a loss.

In addition to that, to assume that he is going to get some other money, that he has from an account-

(Testimony of W. F. Miller.)

ing standpoint, or any other standpoint, particularly from an accounting standpoint and assumed that he was going to get some money that he had no idea he was going to get, to attempt to tax it in this period don't justify, from an accounting standpoint, it don't make sense.

### Redirect Examination

By Mr. Patten:

Q. Mr. Miller, is there any accounting principle by which you can compute gain in one year on what might happen in the next year, or does each year have to stand on its own basis?

A. Each year has to stand on its own basis. You can't come along and attempt to put in a lot of money that there is a possibility to get in future years when the possibility is very questionable.

Mr. Patten: That is all, thank you.

(The witness left the stand.)

Mr. Patten: Mr. Dollar, please.

Mr. Foye: Did you subpoena Mr. Dollar?

The Court: He is in the courtroom and may be [164] called.

## JOE B. DOLLAR

a witness called on behalf of the Plaintiff, being first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: Joe B. Dollar.

Mr. Foye: Your Honor, this is the witness that I mentioned this morning. I attempted to subpoena Mr. Dollar yesterday after the Court recessed and found out he was in Sun Valley. I called Mr. Dollar and asked if he would volunteer to come to testify for the Government in this trial and told him we would not subpoena him in Sun Valley. Mr. Dollar has volunteered to come here. I would like to call him as a Government witness before Mr. Patten takes him.

Mr. Patten: Does it make any difference?

The Court: He may be called by the Plaintiff and you may call him as your witness thereafter, if you desire.

Mr. Foye: I will call him as an adverse witness.

Mr. Patten: You may cross-examine him.

The Court: I don't think you may call him as and adverse witness. You may cross-examine him.

Mr. Patten: Mr. Mattison, will you stand, please?

(Mr. Mattison stood in the courtroom.) [165]

(Testimony of Joe B. Dollar.)

Direct Examination

By Mr. Patten:

Q. Mr. Dollar, what is your business?

The Witness: Saving and loan.

Q. And what is your address, sir?

A. 900 Jefferson Street, Boise.

Q. How long have you lived in Boise?

A. About thirty-five years.

Q. Would you look at the gentleman right here, Mr. Mattison (indicating)? Do you know Mr. Mattison?

A. I do now, yes.

Mr. Foye: When did you first realize—oh, I thought you were through.

Q. (By Mr. Patten): Have you had any business transactions with Mr. Mattison?

A. I have, yes, sir.

Q. What was this transaction, sir?

A. Golly, I think it was an option of some kind.

Q. Did you buy some stock in the Wescott Oil Company at one time, sir?

A. Yes.

Q. How much did you pay for it?

A. Well, I don't know how much I paid a share, that is, I gave them \$5,000. [166]

Q. What did you get when you sold it?

A. Around \$15,000, as I recall.

Q. Did you sell Mr. Mattison any assets or did you sell him stock?

A. Well, I think I sold him stock.

Q. Have you previously discussed this matter with Mr. Foye?

(Testimony of Joe B. Dollar.)

A. Yes; over the telephone.

Q. Did he call you in Sun Valley?

A. In Sun Valley.

Q. And what did you tell Mr. Foye at the time he phoned you?

A. I told him that I thought I sold the stock to Wescott.

Q. Now, can you explain the mistake you made in talking to Mr. Foye?

A. Well, I naturally thought that the man that came in to see me—and I didn't recall what his name was, I think I told Mr. Foye that I don't know Mr. Mattison, and I didn't until I saw him.

Q. This is the gentleman that came to your office (indicating Mr. Frank Mattison)?

A. That is right.

Mr. Patten: You may inquire. [167]

### Cross-Examination

By Mr. Foye:

Q. Mr. Dollar, subsequent to the time you talked to me yesterday, have you had occasion to talk to Mr. Patten or Mr. Mattison this morning?

A. Yes.

Q. When was that? A. This morning.

Q. This morning. Did they call you in Sun Valley? A. Yes.

Q. Did he tell you the occasion for his call, sir?

A. Yes. They didn't call me, Bill Langroise called me, he wanted me to appear here.

(Testimony of Joe B. Dollar.)

Q. And did he ask you if you had ever met Mr. Mattison?

A. Yes; I think he asked me that, too.

Q. And you told him you had not?

A. I told him I didn't think I had.

Q. And what did he say to that?

A. He said, "Would you recall if you saw him?"  
And I said, "I think probably I would."

Q. You are absolutely certain now, Mr. Dollar, that Mr. Mattison came to you and asked you to sell your stock in the Wescott Oil Company to him?

A. That is right. [168]

Mr. Foye: I have no further questions. That is all, Mr. Dollar.

The Court: That is all, Mr. Dollar.

(The witness left the stand.)

Mr. Patten: The plaintiff rests, your Honor.

Mr. Foye: Did you rest?

Mr. Patten: Yes, sir.

Mr. Foye: The defendant calls Mr. Fred Costello as an adverse witness.

The Court: You better lay a foundation for that first.

Mr. Foye: Yes, sir.

## FRED A. COSTELLO

a witness called on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Foye:

Q. Will you state your name, please, sir?

The Witness: F. A. Costello.

Q. And what is your address, sir?

A. 3316 Crescent Rim Drive, Boise.

Q. What is your present occupation?

A. Public Accountant.

Q. And how long have you been so engaged?

A. Around twelve years. [169]

Q. And what did you do prior to that time, Mr. Costello?

A. I was in the Internal Revenue Office.

Q. Here, in Boise?

A. Yes, sir, and other places.

Q. Would you state for the record, please, what your education is in the field of Accounting?

A. Oh, it's mostly from correspondence courses.

Q. Are you a Certified Public Accountant, sir?

A. No, sir.

Q. Are you authorized to practice before the Treasury Department of the United States?

A. No, sir.

Q. Do you hold yourself out as a tax consultant, yourself?

A. I hold myself out—the stationery says, “Tax Accountant.”



(Testimony of Fred A. Costello.)

Q. Do you know the plaintiff in this lawsuit, Mr. Frank Mattison?      A. Yes, sir.

Q. And how long have you known him?

A. I'd estimate in excess of 20 years, probably 22.

Q. Did you represent Mr. Mattison in this case, now on trial, before the Internal Revenue Service?

A. Well, I participated in a conference with Mr. [170] Miller before the Appellate Staff.

Q. Any other representation?

A. I don't recall. I have been trying to recall whether we had a Ten-Day Conference or not.

Q. Assuming there was an informal conference, would you have represented Mr. Mattison at that conference?

A. I think Mr. Miller and myself would have represented him.

Q. Both of you?      A. I think so.

Q. And you represented him before the Appellate Staff?

A. That is right. I was present at the conference.

Q. Do you know Mr. C. J. Wescott?

A. Yes, sir.

Q. Have you ever represented him, sir?

A. No, sir.

Q. Are you familiar with the transaction in question in this case whereby Mr. Mattison purchased the stock of the Wescott Oil Company and liquidated the assets—sold the assets to the Continental Oil Company?      A. I think I am.

(Testimony of Fred A. Costello.)

Q. Will you please tell the Court how you first became acquainted with the transaction?

A. Mr. Mattison came to my office—I might add [171] this—when you were in my office a few days ago I said that Mr. Wescott was with him. It is now my best recollection that he was not.

Q. Have you talked to Mr. Patten since you made that recollection?      A. Yes, sir.

Mr. Patten: Your Honor, I resent the inferences that I am getting. I——

Mr. Foye: I intend to make no inferences, your Honor, that Mr. Patten has asked the witnesses to change their story. I would like the record to show what the facts are.

The Court: Counsel has a right to talk to the witnesses.

Mr. Foye: I don't——

The Court: He may answer the question, “yes or no,” whether he talked to him. I don't know that it is necessary or you are entitled to go into what he said to him.

Mr. Foye: Will the reporter read the question, please?

(The Reporter read the pending question as follows: “Question: Have you talked to Mr. Patten since you made that recollection?”)

Mr. Foye: You may answer, “yes or no.”

The Witness: I answered that, “yes, sir.” [172]

Q. (By Mr. Foye): Mr. Wescott had never come to your office as far as you now can recall?

(Testimony of Fred A. Costello.)

The Witness: Yes, he came to my office after the transaction had been completed and I thought he had been in my office two or three times, and he mentioned to me yesterday that he had been in once.

Q. And that is now the source of your recollection, sir?

A. I think he was in at least twice, that is my recollection.

Q. Do you now recall that he was not in your office prior to the time the transaction was consummated?

A. I feel very certain.

Q. Was Mr. Mattison in your office prior to the time the deal was consummated?

A. Yes, sir.

Q. And Mr. Wescott did not come in?

A. I feel quite certain he did not.

Q. Do you recall the purpose Mr. Mattison came to your office, sir?

A. Yes, sir. He wanted tax advice with respect to this proposed transaction that is now before the Court.

Q. Whom did you think you were representing at that time, Mr. Costello? [173]

A. I thought I was representing the Wescott Oil Company.

Q. Why was that?

A. Well, I think I just took it for granted. I thought of Mr. Mattison and the Wescott Oil Company as kind of a unit, I guess.

Q. Did Mr. Mattison ask your tax advice relat-

(Testimony of Fred A. Costello.)

ing to the tax picture of the Wescott Oil Company or his own personal tax?

A. Wescott Oil Company.

Q. He asked you nothing about his own personal taxes? A. Not that I recall, no, sir.

Q. And who paid you for giving that advice?

A. Well, I think I sent—the firm bill went to Wescott Oil Company but Mr. Mattison paid it with his personal check.

Q. And that fee was \$750? A. Yes, sir.

Q. Were there any other services rendered for that fee of \$750, if you recall?

A. Oh, I think we discussed filing a request for prompt assessment. I gave him the form to fill in for that purpose.

Q. That is the only thing? [174]

A. Yes, sir.

Mr. Foye: That is all.

Mr. Patten: No questions.

The Court: That is all Mr. Costello.

The Witness: Thank you.

Mr. Foye: The defendant calls Mr. Peterson.

The Court: Before you call your next witness we will take the morning recess.

(The Court took a short recess.)

The Court: You may call your next witness.

Mr. Foye: Mr. Peterson, please.

CHARLES O. PETERSON, JR.

a witness called on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please.

The Witness: Charles O. Peterson, Jr.

Direct Examination

By Mr. Foye:

Q. Mr. Peterson, where do you live?

A. Boise, Idaho.

Q. What is your occupation, sir?

A. Internal Revenue Agent.

Q. How long have you been an Internal Revenue Agent?

A. Since early in 1951. Prior to that time I was a Deputy Collector. [175]

Q. What year, sir?

A. I started as a Deputy Collector when I got out of the Army in 1945.

Q. What is your education, sir?

A. College graduate.

Q. What college? A. Utah State.

Q. What was your major? A. Accounting.

Q. Are you a Certified Public Accountant?

A. Yes.

Q. In the State of Idaho? A. That's right.

Q. Have you conducted any investigation of the Income Tax liability of Mr. Frank Mattison?

A. Yes.

(Testimony of Charles O. Peterson, Jr.)

Q. In connection with that investigation, have you examined the corporate records of the Wescott Oil Company, or the income tax returns of the Wescott Oil Company and Mr. Mattison for the years of 1952 and 1953?      A. Yes.

Q. Have you examined the complete administrative files of the Revenue Service in this case, sir?

A. Yes, I have.

Q. Do you know whether or not that file [176] was prepared in the ordinary course of the Revenue Service administrative procedure?

A. As far as I know, it was.

Q. Do you know what changes were made from the way the taxpayer originally reported the transaction on the return and the assessment that was made against him for the additional tax?

A. The Government's position, as set forth in the Statutory Notice, is based on—oh—is that Mr. Mattison acquired the stock of Wescott Oil Company for the purpose of selling the operating assets to Continental Oil Company, therefore, the gain is attributable to and the result of the sale of these assets and the gain is measured by the difference between the sale price of the assets and the cost of the assets which were sold to Continental in 1952.

The cost of the assets is based upon the cost of the stock which he acquired for the purpose of acquiring these assets, less the portion of the cost which is applicable to the assets which were retained by the corporation and were not sold. The gain is short

(Testimony of Charles O. Peterson, Jr.)

term capital gain, of course, since the assets were bought and sold simultaneously.

Q. On which year? A. In 1952.

Q. Did the Revenue Service tax, in their deficiency [177] notice, sir, any gain that was not received in 1952? A. Not—not to my knowledge.

Q. Have you examined their computations upon which the assessment was based, sir?

A. Yes, I have.

Q. Do those computations disclose that any gain was taxed in 1952 that was not received in 1952?

A. No.

Q. Now, did the Revenue Service make any change in the assessment from the way the taxpayer reported the transaction, as far as liabilities assumed were concerned?

A. The taxpayer treated the liabilities which he assumed in this transaction as a part of basis. In the Statutory Notice of deficiency these liabilities are treated as reduction of proceeds.

Q. Mr. Peterson, were you the original examining agent in this case, sir? A. Yes, I was.

Q. Subsequent to the time that you made your report, can you tell us what happened then?

A. The taxpayer did not agree to my findings and appealed to the Appellate Staff.

Q. Do you know whether or not the Appellate Staff agreed with your legal theory of this case?

A. They used a different theory in the [178] matter. The gain is substantially the same in my computations and the computations of the Appellate

(Testimony of Charles O. Peterson, Jr.)

Staff set forth in the statutory notices. My position was that the gain on the transaction was realized on the liquidation of the corporation, whereas the position set forth on the statutory notice was that the gain was realized upon the sale of assets.

Q. Did they change their primary reliance of the legal theory from the basic theory that you primarily relied on?

A. They discussed my position as an alternative. Is that what you mean? I don't—

Q. Yes, sir. What legal theory did they base their primary reliance upon?

A. Upon the theory that the gain was attributable to the sale of assets.

Q. Did they agree substantially with your tax effect of this transaction, outside of changing your legal theory?

A. Substantially the same. There was an increase, a net increase in tax for the two years in the approximate amount of \$2,000, which I think is largely due to the treatment of the liabilities which Mr. Mattison assumed.

Q. How did the Appellate Staff treat the liabilities?

A. They treated those liabilities as a [179] reduction of proceeds, where I had treated them as a part of basis, which was the same way the taxpayer reported them.

Q. Now, Mr. Peterson—could I have this marked for identification, please?



(Testimony of Charles O. Peterson, Jr.)

The Clerk: Being marked as Defendant's Exhibit No. 1 for identification.

(The document referred to was marked Plaintiff's Exhibit No. 1 for identification.)

Q. (By Mr. Foye): I hand you this document, marked as Defendant's Exhibit No. 1 for Identification, and ask you, please, what that is?

The Witness: It's a part of the Appellate Staff's narrative report in their conference with the taxpayer.

Q. Do you know the purpose for which that computation contained there was made?

A. For the purpose of instructing the auditor who writes the statutory notice. The purpose of giving him the figures on which to base the statutory notice.

Q. Do you know whether or not the statutory notice of the assessment at issue here was based on those figures?      A. Yes, it was.

Q. It was? [180]      A. Yes.

Q. Mr. Peterson, who was the representative of the Internal Revenue Service at the Appellate hearing in this case, if you know?

A. Ralph Lindberg.

Q. Do you know whether or not he is still with the Revenue Service?

A. He has resigned.

Q. Do you know where he has gone?

A. California.

(Testimony of Charles O. Peterson, Jr.)

Mr. Foye: I will offer Defendant's Exhibit No. 1 for Identification in evidence.

Mr. Patten: May I ask Mr. Peterson a few questions?

The Court: Yes, you may.

### Voir Dire Examination

By Mr. Patten:

Q. Mr. Peterson, was this document prepared by you, sir?

The Witness: This one I'm looking at?

Q. Yes, sir. A. No, sir.

Q. How do you know—and do you know who prepared it?

A. It's in the—it's a part of the appellate report.

Q. Was this part of the information which [181] was furnished the taxpayer, or was that part of the confidential file of the Internal Revenue Service? A. It was not furnished to the taxpayer.

Q. Do you recall, on my taking your deposition on September 5, 1957—— A. Yes.

Q. Do you recall my asking for your computations on that date? A. Yes.

Q. Do you recall refusing on the ground these were confidential and privileged communications?

A. Well, I didn't refuse.

Q. You recall that they were refused?

A. Yes, sir.

Mr. Patten: I object to the documents on the grounds that this witness did not prepare it and

(Testimony of Charles O. Peterson, Jr.)

there is nothing here to connect it and it's confidential, and the Government can either keep it confidential or they bring it out openly in court, hence keep veiled the secrecy and keep state secrets around it and then flash it in the court room when you don't have an adequate opportunity to either examine the document or the man who prepared it, your Honor.

Mr. Foye: Your Honor, this has been prepared, as Mr. Peterson testified, in the ordinary course of the [182] Revenue Service procedure.

The Court: I know that, I heard him testify. The question that remains here, as far as the Court is concerned is the final conclusion reached by the Appellate Staff, as a result of that they assessed this additional tax. The question is whether it was justifiable by virtue of this letter or whether it was the computation they made. Whether these figures are correct, there isn't anybody here to be cross-examined on these figures. He did not prepare them, he knows nothing about them. The objection will be sustained.

#### Direct Examination

(Continued)

By Mr. Foye:

Q. Mr. Peterson, can you, sir, prepare, of your own knowledge, a computation showing how the tax assessed in this case was based?

The Witness: Well, yes, I could reconstruct it, I think. It will take quite a little time.

Q. Can you make the computation here, sir?

(Testimony of Charles O. Peterson, Jr.)

A. Without the assistance of this schedule, here, it would probably take a little time to do it.

Mr. Foye: May I have this marked for identification, please?

Mr. Patten: It would be helpful if he would do it on the blackboard. [183]

Mr. Foye: Be glad for him to. Do it on the blackboard. Will that be all right with you, Mr. Peterson?

A. Yes, with the aid of this schedule?

Mr. Foye: Pardon me?

The Witness: With the aid of the schedule?

Mr. Patten: No, sir. You may use the Exhibit.

Mr. Foye: The Court will have to answer that question.

The Court: That is right. You cannot copy those figures, that is not in evidence. You will have to compute the tax as finally computed by something from the Exhibits.

Q. (By Mr. Foye): Mr. Peterson, would you please, it isn't necessary, Mr. Peterson, that you have the precise figures. I would like for you to explain to the Court, please, using rounded off figures the theory upon which the Internal Revenue Service assessed the tax at issue.

The Witness: I don't know whether I can. Can I use my prior report? I prepared that.

Q. Certainly.

(The witness left the stand and went to the blackboard.)

(Testimony of Charles O. Peterson, Jr.)

A. (Writing): "Proceeds \$1,400,000.

Q. That is the proceeds from the sale of the assets, sir? [184]

A. Subsequent check. (Writing.) "Subsequent check."

Q. That was from the Continental Oil Company?

A. Yes. (Writing.) "289,399.07." Subtracting results of 1-6-8-9-3-9-9-point-0-7.

Q. That is the computation of the basis on which the tax was assessed, is that right?

A. That's right. (Writing.) "\$1,689,399.07." "Less liabilities assumed \$310,000." With a result of \$1,389,399.07. (Writing.) "\$1,389,399.07." "Cost of stock: Documentary Stamps \$129.84. Paid to shareholders \$1,134,870.16."

Final payment to C. J. Wescott, that last figure is the amount distributed by the bank.

Q. To the stockholders?

A. Yes. (Writing.) "Final Pmt \$212,610.41" Result of \$1,347,610.41 less. (Writing.) "Less costs applicable to assets not sold: Cash \$101,585.76." That is cash in the amount of 1-0-1-5-8-5-7-6. (Writing.) "Lilly Seed Co. \$1,000.00. \$102,585.76."

Q. Do you know whether or not that was the amount of cash distributed to Mr. Mattison in 1953?

A. Yes, that is the final figure on the stock of the Lilly Seed Company Stock. Now, on this cash, Mr. Mattison owned 25 shares for several years prior to this [185] transaction.

Q. How did the Revenue Service treat that 25

(Testimony of Charles O. Peterson, Jr.)

shares? A. As a long term capital gain.

Q. On the 25 shares of the liquidation?

A. Yes, that's right. Now, then, a portion of this cash is applicable to the 25 shares and the portion would be twenty-five over twenty-one-eighty-nine. (Writing.)

Q. What does that say?

A. Less the portion applicable to the 25 shares. (Writing.) "\$1,000." Do I need to do the arithmetic or could I just add the \$1,000?

Mr. Patten: Go ahead, you do not need to make a break down between the 25 shares.

Q. (By Mr. Foye): Just show how the gain was arrived at.

A. I can't tell without writing. I would guess at a thousand dollars.

Mr. Foye: That would be satisfactory if you guess at that. Unless you want him to compute the fraction.

Mr. Patten: No.

The Witness (Writing): "\$1,246,024.65."

Q. (By Mr. Foye: And what is that figure, sir?

The Witness: \$1,246,024.65 which would be [186] the cost of the assets which were sold to Continental in 1952, and I take it from the total of \$1,389,399.07 and that should be the gain on the sale of the assets. Now, there were some expenses of the sale. There is no argument on that.

Q. That \$1,246,024.07, you had to guess at the figure—you had to guess at the 25 shares—was the basis that the Revenue Service used for the assets

(Testimony of Charles O. Peterson, Jr.)

sold in 1952, was it?           A. That's right.

Mr. Foye: That is all, Mr. Peterson.

Mr. Patten: May I inquire?

Mr. Foye: Certainly.

The Court: Resume the stand please, Mr. Peterson.

(The witness resumed the stand.)

### Cross-Examination

By Mr. Patten:

Q. Now, Mr. Peterson, those are the key figures to the computation. This \$102,585.76, those are the key figures to the computation. If we eliminate these two figures your answers would come out substantially as reported on the taxpayer's return, is that not right, sir?

The Witness: Well, I think so, yes.

Q. If we take these figures out—the cash is 1-0-1-5-8-5-7-6, and the \$1,000 Lilly Seed Stock, our [187] figures would be approximately what was reported on the taxpayer's return?

Mr. Foye: Will you specify where you are taking out of, sir?

Mr. Patten: Taking away from basis.

Mr. Foye: Yes, sir.

Mr. Patten: Is that right, sir?

The Witness: I think so.

Q. (By Mr. Patten): Now, your computation would be exactly the same if you put these figures in receipts, or whether you took them out of basis,

(Testimony of Charles O. Peterson, Jr.)

your end figure would come out the same, wouldn't it?      A. Oh, yes.

Q. Now, sir, do you recall when Mr. Mattison received the \$101,585.76?

A. Well, received—well—that—that figure is the figure that was disbursed to him from the corporation in 1953.

Mr. Patten: May I have Exhibit N and Exhibit Q?

Q. (By Mr. Patten): I am handing you Exhibit N, sir, and calling your attention to the third check there, what is the amount of that check, sir?

The Witness: \$101,585.76. [188]

Q. And what is the date of that check, sir?

A. May 12, 1953.

Q. Handing you Exhibit Q, and I ask you if you know what that is?

A. That is a deposit ticket, here, on the First Security Bank of Idaho, Frank Mattison, Special Account, a deposit in the amount of \$1,000, and it's labeled Lilly.

Q. What is the date of that deposit?

A. May 13, 1955.

Q. Now, isn't it a fundamental basis of taxation that the tax for each year crystalizes at the close of that year?      A. Yes.

Q. And that nothing which happens, with a few minor exceptions—technical exceptions, that happen after that can effect the tax for the year which is closed?

A. Generally speaking, that is correct.



(Testimony of Charles O. Peterson, Jr.)

Q. That is correct. Will you explain to us on what basis you determined this transaction for 1952, transactions which occurred in 1953 are based?

A. That computation is to arrive at the gain on the assets which Mr. Mattison sold and, of course, obviously, he didn't sell the cash.

Q. I am afraid I can't understand you, sir. How did you get this figure, was it the bank balance at the [189] end of 1952 or how? This figure was not determined until 1953, was it?

A. That is right—I mean that is the figure that—

Q. Could that figure have been computed in 1952?

Mr. Foye: I will object on the ground that there is no proper foundation laid. I don't think it was gone into and it would be a conclusion of the witness on that.

The Court: If he does not know, he can say so.

The Witness: Well, they could have computed a cash balance which, in all probability, would not have been that figure.

Q. (By Mr. Patten): Can you explain me, in any way that it is possible, that before midnight of December 31, 1952, that the taxpayer could have computed this figure and he could have used it in his return?

The Witness: I think he could have, substantially, because—testimony—

Q. Would you do that for us, sir?

A. Well, it is, as I recall from the testimony—

(Testimony of Charles O. Peterson, Jr.)

Q. Would you do that for us?

A. There were only very few checks written in 1953, the major part of the difference—Mr. Mattison testified this morning—the major part of the difference between the cash balance at the end of 1952 and the figure of [190] 1-0-1-5-8-5-7-6 was the Federal and the State Income Tax which could have been computed at that point.

Q. Would you show me the method by which Mr. Mattison could have computed and obtained that figure? Is this figure based upon facts which occurred in 1952 or 1953?

Mr. Foye: Your Honor, we will stipulate that the figure could not have been computed until 1953.

The Court: Very well.

Q. (By Mr. Patten): And so the taxpayer could not have prepared computations such as you have at the time his returns were prepared?

The Witness: I think he could, within a matter of a few hundred dollars because the major part of the disbursements out of the cash account after December 31, 1952, was for tax liability which could have been determined, which were determinable at that point.

Q. Is this computation based on occurrences in 1953 or occurrences in 1952, sir?

A. Well, there is no argument about, it's necessary for the corporation in business to accrue liabilities when they are accruable. That is correct.

Q. Will you answer my statement of whether this is based on facts which occurred and were com-

(Testimony of Charles O. Peterson, Jr.)

pleted in 1952, or [191] is it based on hind-sight as to what happened in '53?

A. I think definitely it is on occurrences in 1952.

Q. Will you show me how, in 1952, the taxpayer could have computed or estimated or anticipated that figure? Will you go to the board, please, sir?

A. (Witness at the blackboard): On cash basis December 31, 1952, as shown by the corporation records of which I have a portion of the cash account was \$127,977.83. (Figure written on the board.) Now, I'll subtract the amount of the Federal and State Income tax, when I find the figure, the balance sheet as shown on the corporation return for the Wescott Oil Company shows Federal Income Tax in the amount of \$23,822.44, and Idaho State Income Tax—

Q. Will you put the figures down please?

A. (Writing): Do you want to see me subtract them?

Q. Yes, please, sir.

A. The result is \$101,599.61. (Figure written on the blackboard.)

Q. Now, were these figures 1952 figures, or the figures finally used on the return you said they were accruing?

A. I think so. [192]

Q. Now, this computation is based on the assumption that it was a sale of assets, is that right?

A. That's correct.

Q. Now, could you tell us whether these assumed

(Testimony of Charles O. Peterson, Jr.)

liabilities of income tax was based on the theory that it was a sale of assets or a sale of stock?

A. Well, of course, those liabilities are corporation liabilities. This question you asked in regard to the sale of assets, that relates to the individual, doesn't it?

Q. Now, if there had been a sale of assets, what would the corporation liabilities have been?

A. I have not figured it.

Q. It would be substantially in excess of \$200,000, wouldn't it? A. I have no idea.

Q. Can you compute it from the corporation tax return, what the liability would have been if it had sold its assets, what its tax would have been? You have the basis.

Mr. Foye: You are assuming the sale for the same price?

Mr. Patten: Yes, for the same price. Just give me a rough figure.

The Witness: I'm still looking for a balance sheet—oh, here—no, that's not it. [193]

Q. (By Mr. Patten): There is one in there. What were the book value of the assets of the corporation?

A. That is what I don't know. That is what I'm trying to find out.

Q. I think they are in there. There it is, sir.

A. Oh, let's see.

Q. Can you tell us what the book value of the corporation's assets were in 1952?

A. There is a schedule of assets here on the re-

(Testimony of Charles O. Peterson, Jr.)

turn distributed by the Wescott Company to Frank Mattison which shows a final figure of seven hundred eight thousand 4-8-5-8-5, total assets of \$1,018,-485.85, less liabilities of \$310,000. I suppose those are the figures, I don't know.

The Court: Mr. Patten, I assume you have a purpose for asking this question, but at the moment I cannot see any reason.

Mr. Patten: Yes, sir. I am coming to it, sir.

The Court: Very well.

Q. (By Mr. Patten): Isn't it true, sir, that you have computed the receipts here on the assumption that this is a sale of assets, and your liabilities on the assumption that it was a sale of stock, and if you use the same assumption all the [194] way through it was a sale of assets. Instead of realizing a gain in the year 1952, Mr. Mattison would have realized a loss of approximately \$100,000?

The Witness: Did you ask me the question?

Q. Yes, sir.

A. I don't think you are correct in your statement.

Q. If the corporation had sold its assets, what would have been its tax liability?

A. Well, it would, the proceeds as shown there, less the basis, I can't tell from what the figures I have here, just what the basis would be.

Mr. Foye: Your Honor, there is no disputing that the form of the transaction was the sale of stock and the liquidation of the corporation. Our position is that the form is not controlling, that the law is that

(Testimony of Charles O. Peterson, Jr.)

in this type of situation this was but a unified transaction constituting the sale of assets, therefore it was necessary to deduct from cash received the accrued income for State and Federal Income Taxes for 1952.

Mr. Patten: My position is, if we proceed, we proceed on the assumption that it is a sale of assets, you have got to follow that assumption all of the way through consistently in computing the liabilities of the corporation, and this, if it is done, and the assumption, you can't change the basis on the assumption. You can't make one part [195] of a computation on one assumption and another part of it on another assumption.

Mr. Foye: The liabilities of the corporation are not at issue in this case, your Honor.

Mr. Patten: They certainly are.

The Court: I don't know whether this young man is in a position to determine the tax of a corporation offhand. If he can estimate what the tax would be, whatever your purpose, he may answer.

Q. Using the basis shown in the return and the actual sales price here.

The Witness: Assuming this is the basis of \$708,485.85, that would leave you a profit in round figures of \$600,000.

Q. And what would the tax be on about \$600,000 using the alternate?

A. It would be either 25 or 26 per cent, I can't remember which.

Q. And that would be over \$100,000, would it not?

(Testimony of Charles O. Peterson, Jr.)

A. Yes.

Q. And if you use these figures down here, there would be no cash left, would there? The taxes would take up all the cash.

Mr. Foye: What figures are you talking [196] about?

Mr. Patten: If we substituted about \$1,000 and subtracted it from the cash balance here, there would be no assets.

Mr. Foye: Mr. Peterson, this figure of \$23,822.44, and the figure that you have placed on the blackboard directly below it of \$2,595.78, are they income taxes paid by the corporation for the year 1952?

The Witness: As far as I know, they are, yes.

Mr. Foye: Are those taxes accrued on the corporation balance sheet in exactly those figures, as of December 31, 1952?

The Witness: Yes, they were.

Mr. Foye: That is all.

Mr. Patten: Those returns were filed in '53, were they not?

The Witness: That is correct.

Mr. Patten: I have no further questions of this witness.

(The witness left the stand.)

Mr. Foye: The defendant calls Mr. Eberle.

## W. D. EBERLE

a witness called on behalf of the Defendant, being first duly sworn, was examined and testified as follows:

The Clerk: State your name for the record, please?

The Witness: W. D. Eberle. [197]

Q. (By Mr. Foye): What is your address, Mr. Eberle? A. 1211 Happy Drive.

Q. Boise? A. Boise, Idaho.

Q. And what is your occupation?

A. I am an attorney.

Q. Do you have any connection with the Pioneer Company, Mr. Eberle?

A. Pioneer Company is a co-partnership of which I am one of the partners.

Q. Are you in charge of the assets of that company, Mr. Eberle? A. Yes, I am.

Q. Were you in charge of the assets of that company in 1952? A. Yes, sir.

Q. Did the Pioneer Company, in 1952, own any stock of the Wescott Oil Company, sir?

A. Yes, sir.

Q. And were you in charge of the disposition of that stock at that time?

A. To the best of my knowledge, yes.

Q. What is your father's name? [198]

A. J. L. Eberle.

Q. Did he ever own any stock in the Wescott Oil Company that you know of?

A. At one time, yes.



(Testimony of W. D. Eberle.)

Q. Do you know what was done with that stock?

A. Yes, it went to Pioneer Company.

Q. That was prior to 1952? A. Yes.

Q. Do you recall when the Pioneer Company sold the stock in the Wescott Oil Company?

A. It was sometime in 1952, to the best of my recollection.

Q. Have you made a search for any papers that you might have in regard to the sale?

A. Yes, I searched this morning to determine if I had any papers and I was unable to find any of them.

Q. I see. What is your recollection, sir, as to how that sale came about?

A. To the best of my knowledge, I have a recollection of receiving some form of letter or information advising of a sale—possible sale of the stock and the money was in escrow at the First Security Bank.

Q. Do you recall from whom that letter was received?

A. No, I don't. I was sure that I could find it but I was unable to do so. [199]

Q. Do you know Mr. Frank Mattison?

A. No; I do not.

Q. Have you ever met Frank Mattison?

A. No; not to the best of my knowledge.

Q. Do you know whether or not Mr. Mattison contacted you on the sale of the stock?

A. To the best of my knowledge he did not.

Mr. Foye: Will Mr. Mattison stand up, please?

(Testimony of W. D. Eberle.)

Q. (By Mr. Foye): Have you ever seen that man before? (Indicating.)

A. Not to my knowledge, although if he has been in Boise I have seen him. I don't know him.

Q. Do you know whether or not Mr. Mattison ever contacted your father regarding the stock?

A. To the best of my knowledge he did not.

Q. Would your father normally have had any control of the stock owned by the Pioneer Company?      A. He did not.

Mr. Foye: You may cross-examine.

#### Cross-Examination

By Mr. Patten:

Q. What is the Pioneer Company?

A. It's a co-partnership consisting of myself, my brother, and my sister.

Q. And the senior Mr. Eberle is your [200] father?      A. He is my father.

Q. Handing you a document, a portion of Plaintiff's Exhibit H, and turning to the second page thereof, is that your signature, sir?

A. That is my signature.

Q. And with whom is that option agreement?

A. This instrument speaks for itself. It is the Pioneer Company and Frank Mattison.

Q. Do you recall the circumstances under which you signed that?

A. To the best of my knowledge this was handed to me, as I remember, by the First Security Bank.

(Testimony of W. D. Eberle.)

Q. How long ago did this transaction occur, sir?

A. Some time—five years ago.

Mr. Patten: No further questions.

Redirect Examination

By Mr. Foye:

Q. Mr. Eberle, do you recall whether or not Mr. Wescott ever contacted you in regard to the sale of this stock?      A. I am sure he did not.

Mr. Foye: That is all, thank you, very much, Mr. Eberle.

(The witness left the stand.)

Mr. Foye: Defendant rests, your Honor. [201]

Mr. Patten: Plaintiff has no rebuttal.

The Court: Is it the desire of counsel to argue this matter orally?

Mr. Foye: Speaking for myself, sir, I would prefer to submit the matter on brief.

Mr. Patten: I would like to do what is best for the Court.

The Court: The Court will take this matter under advisement. How long does the plaintiff desire to file the brief? In the pretrial brief you cited ample authority for your position and I assume that your briefs would be analyzing what you think the facts are and the theory of the case.

Mr. Patten: As Mr. Foye said, we are anxious to be helpful to the Court and if the Court would tell us any particular points on which he would like further briefing we will be glad to do that.

The Court: As far as I am concerned, if both of you think you have set forth your position I will take the matter under advisement. The only thing that occurs to me is that you might be helpful in setting out your theory in view of the facts as you think they appear from the record.

Mr. Foye: I would like an opportunity to do that, your Honor, and I would like an opportunity to reply to Mr. Patten's legal position. [202]

The Court: You should set forth your position in the brief from a legal standpoint.

Mr. Patten: Your Honor, you get tired of hearing this, but I am starting another trial and would like at least 30 days to file my brief, if the Court will grant that.

The Court: You may have 30 days.

Mr. Foye: I would like 30 days.

The Court: You may have 30 days for filing your answering brief, and how long for the reply brief, Mr. Patten?

Mr. Patten: Ten days.

Mr. Foye: I would like to have a transcript of the evidence.

The Court: Let us put it this way, you will have 30 days from the receipt of the transcript.

The Court is adjourned, subject to call.

(The Court adjourned at 12:15 o'clock p.m.) [203]

State of Idaho,  
County of Ada—ss.

I, Edward F. Seymour, hereby certify that I am an Official Reporter for the United States District Court for the District of Idaho;

I further certify that I took the proceedings in the above-entitled cause in Stenotypy and thereafter reduced the same into typewriting and I further certify that the foregoing pages, 1 to 203, both inclusive, is a true and correct transcript of the proceedings had in and about said hearing on the dates mentioned therein.

In Witness Whereof I have hereunto set my hand this 9th day of October, 1957.

/s/ EDWARD F. SEYMOUR,  
Official Reporter.

[Endorsed]: Filed October 10, 1957. [204]

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#### DOCKET ENTRIES

1957

Feb. 8—File Complaint.

Feb. 8—Issue Summons.

Feb. 13—File Summons—served Feb. 11, 1957.

Apr. 10—File Motion & Order—May 15, 1957, for  
Deft. to Answer (Judge Taylor).

Apr. 12—File Answer.

Apr. 12—File Certificate of Service.

1957

- July 1—Filed Notice to Take Deposition of Frank N. Mattison and C. J. Wescott.
- July 2—Filed Motion to vacate taking Depositions of Frank N. Mattison & C. J. Wescott.
- July 3—Filed Order Vacating Taking Depositions of Frank N. Mattison & C. J. Wescott (FMT).
- Aug. 15—Filed Notice to take Deposition of Frank N. Mattison & C. J. Wescott.
- Sept. 5—Record of pretrial hearing-stipulation of facts to be submitted.
- Sept. 7—Filed deposition of Frank N. Mattison & C. J. Wescott.
- Sept. 9—Filed motion for leave to amend answer.
- Sept. 9—Filed pretrial brief of deft.
- Sept. 9—Filed deposition of Charles Peterson.
- Sept. 9—Filed deposition of John W. Hartigan.
- Sept. 10—Enter order allowing amendment to answer.
- Sept. 10—Filed amendment to answer.
- Sept. 10—Record of court trial.
- Sept. 10—Filed stipulation re documents.
- Sept. 10—Filed reply to counterclaim.
- Sept. 11—Record of court trial, taken under advisements, 30-30-10 for briefs.
- Oct. 10—Filed reporter's transcript.
- Nov. 7—Filed Order: 12/11/57 for Plaintiffs to file Brief (FMT).
- Dec. 9—Filed plaintiffs brief.

1958

- Jan. 8—Filed motion & Order, Feb. 8, 1958, for deft's. brief (FMT).
- Feb. 10—Filed brief for the defendant.
- Feb. 17—Filed stipulation & order for extension of time to file plaintiff's brief, March 24, 1958 (FMT).
- Mar. 10—Filed reply brief of plaintiffs.
- July 2—Filed memorandum opinion (FMT).
- July 24—Lodged findings of fact and conclusions of law.
- July 24—Lodged judgment.
- July 24—Filed acknowledgment of service.
- July 29—Filed findings of fact and conclusions of law.
- July 29—Filed judgment for plaintiffs for \$53,461.89 plus interest (FMT).
- Aug. 29—Filed notice of appeal. Copy to Woolvin Patten & Langroise & Sullivan.
- Aug. 29—Filed affidavit of mailing.
- Sept. 26—Filed notice of appeal.
- Sept. 26—Copies of notice of appeal to Langroise & Sullivan & Woolven Patten.
- Oct. 6—Filed withdrawal of notice of appeal, filed Aug. 29, 1958.
- Oct. 31—Filed motion and order extending time to Nov. 27, 1958, to file record on appeal.
- Nov. 19—Filed designation of contents of record on appeal.
- Nov. 19—Filed certificate of service of designation by mail.

[Title of Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Idaho—ss.

I, Ed M. Bryan, Clerk of the United States District Court for the District of Idaho, do hereby certify that the foregoing papers are that portion of the original files designated by the parties and as are necessary to the appeal under Rule 75 (RCP):

1. Complaint.
2. Answer.
3. Amendment to Answer.
4. Stipulation (Exhibits A through Q, listed in stipulation, admitted at the trial and included with other exhibits).
5. Reply to Counterclaim.
6. Reporter's Transcript of Proceedings.
7. Memorandum Opinion.
8. Findings of Fact and Conclusions of Law.
9. Judgment.
10. Notice of Appeal filed September 26, 1958.
11. Designation of Contents of Record on Appeal.
12. Copy of docket entries.
13. Minutes of the court of Sept. 10, 1957, and Sept. 11, 1957.
14. Motion and order extending time for filing record on appeal.





In the United States Court of Appeals  
for the Ninth Circuit

No. 16,257

UNITED STATES OF AMERICA,  
Appellant,

vs.

FRANK N. MATTISON and IDA G. MATTI-  
SON,

Appellees.

#### APPELLANT'S STATEMENT OF POINTS

Pursuant to Rule 17.6 of the Rules of this Court, appellant hereby states that it intends to rely upon the following points on this appeal:

1. The District Court erred as a matter of law in failing to apply to the facts of record in this case the well-established rule that, for federal income tax purposes, the component steps of a single transaction will not be treated separately if in intent, purpose and result it is a single transaction.

2. The District Court erred as a matter of law in failing to hold, on the facts of record in this case, that taxpayer Frank N. Mattison's acquisition of all of the stock of the Wescott Oil Company and the subsequent liquidation of that company were component steps in an integrated series of transactions which, for tax purposes, must be viewed collectively as constituting the purchase of Wescott's assets by taxpayer Frank N. Mattison.

3. The District Court's opinion and judgment are not supported by, but are contrary to, the facts as they were revealed by the pleadings and trial of this cause.

4. The District Court's opinion and judgment are contrary to law.

/s/ CHARLES K. RICE,  
Attorney for Appellant.

[Endorsed]: Filed December 8, 1958.

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[Title of Court of Appeals and Cause.]

### STIPULATION

It is hereby stipulated by counsel for the respective parties, subject to the approval of the Court, that the exhibits in the record on appeal, to wit, Plaintiff's Exhibits A through A-A, and Defendant's Exhibit 1, need not be printed and may be considered for all purposes as a part of the printed record herein, so that counsel may refer to them on brief and in oral argument; and that counsel may, if they so desire, reproduce in whole or in part in appendices to their respective briefs any of the exhibits to which reference is made.

/s/ CHARLES K. RICE,  
Attorney for Appellant.

/s/ WOOLVIN PATTEN,  
Attorney for Appellee.

[Endorsed]: Filed December 23, 1958.

